

1973 Present : Pathirana, J., and Rajaratnam, J.

M. THAJUDEEN and another, Appellants, and K. S. GUNASEKERA, Respondent

S. C. 1037-1038 of 1969—M.M.C. Colombo, 36527

Butchers Ordinance (Cap. 272)—Sections 2, 3, 4 (1), 7, 14, 15, 18, 19—By-laws of the Colombo Municipal Council (Revised Edn. 1958)—Validity of By-law restricting sale of meat only to meat of animals slaughtered at a Colombo Municipal Slaughter House—Circumstances under which a by-law is repugnant to the general law.

By-law 30 of Chapter XIII of the By-laws and Regulations of the Colombo Municipal Council is not repugnant to and therefore not *ultra vires* the Butchers Ordinance when it restricts the sale of meat only to meat of animals slaughtered at a Colombo Municipal Slaughter House.

Lafier v. Ediriweera (70 N. L. R. 334) overruled.

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

C. Ranganathan, with G. F. Sethukavalar and G. S. Wijesekera, for the 1st and 2nd accused-appellants.

J. W. Subasinghe, with (Miss) Nilmini Gunasekera for the complainant-respondent.

Cur. adv. vult.

February 21, 1973. PATHIRANA, J.—

This appeal came before us consequent to an order made by My Lord the Chief Justice dated 14.2.71 in view of the conflicting decisions of this Court regarding the validity of the By-law under which the accused were charged. The matter was therefore referred before a bench of two judges.

The accused-appellants were charged as follows :—

“ You are hereby charged that you did within the jurisdiction of this Court at No. 7, De Mel Street, Colombo, on 1st October, 1968, expose for sale 77 pounds of meat of a carcass of a buffalo not slaughtered at the Colombo Municipal Slaughter House and thereby committed an offence in breach of Rule 30 of Chapter XIII of the By-Laws and Regulations of the Colombo Municipal Council published in Government Gazette No. 6,080 of 20th October, 1905, read with Section 267 (2) of the Municipal Councils Ordinance and thereby

committed an offence punishable under Rule 2 of Chapter XXV of the said By-laws and Regulations published in the Government Gazette No. 8,212 of 8th April 1936.

(2) That at the same time and place aforesaid and in the course of the same transaction you did expose for sale 77 pounds of buffalo meat without a Pass issued to you under Rule 23 of Chapter XII of the By-laws and Regulations of the Colombo Municipal Council published in Government Gazette No. 6,080 of 20th October, 1905, read with Section 267 (2) of the Municipal Councils Ordinance and thereby committed an offence punishable under Rule 2 of Chapter XXV of the said By-laws and Regulations of the Colombo Municipal Council published in Government Gazette No. 8,212 of 8th April, 1936.”

They were both found guilty on the two counts.

By-law 30 in Chapter XIII of the By-laws and Regulations of the Colombo Municipal Council (Revised Edition, 1958) 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.”

The appellants take up the position that the by-law is repugnant to and therefore *ultra vires* the general law contained in the Butchers Ordinance (Chapter 272).

The repugnancy, it is submitted, arises in the following manner :—

- (a) By-law 30 restricts the sale or exposure for sale of meat only to meat of animals slaughtered in the Colombo Municipal Slaughter House ;
- (b) Prohibits the sale or exposure for the sale of meat of animals slaughtered at other authorised places.

It is urged, therefore, that the by-law is *ultra vires* the Butchers Ordinance on the ground of repugnancy in that :—

- (a) By Section 14 of the Ordinance the slaughter of animals is not prohibited—
 - (1) at a public slaughter house as provided in Chapter III of the Ordinance,

(2) at any place appointed by the proper authority.

Proper authority is defined in Section 3 of the Ordinance.

(b) By Sections 18 and 19 of Chapter II of the Ordinance by any person other than a licensed butcher on a permit granted to him from the proper authority defined in the Ordinance.

Manicavasagar J. in *Lafier v. Ediriweera*¹ (1966) 70 N. L. R. 334 was of the opinion that the by-law by confining the *sale* of meat of any animal slaughtered in the Colombo Municipal Slaughter House forbids and makes it unlawful that which the general law, namely, the Butchers Ordinance, has impliedly authorised.

Tennekoon J. in the unreported case (S. C. 110/66, M. M. C. Colombo, No. 26938/MPL) followed the judgment of Manicavasagar J. and held that by-law 30 was *ultra vires* the Butchers Ordinance.

Samerawickrame J. in *Sebastian v. Ediriweera*² (72 N. L. R. 64) refused to follow the above decisions and therefore took a contrary view. He held that the by-law was not *ultra vires* the Butchers Ordinance. His decision was based mainly on the reason that the Ordinance requires a licence before any person exposes meat of animals slaughtered in Ceylon for sale. The Ordinance therefore treats the licence as a *sine qua non* for the sale of meat of animals slaughtered in Ceylon but has made 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. The Ordinance, therefore, has no provision dealing with the matter which is the subject of the by-law.

A by-law affects the public or some portion of the public and is imposed by some authority clothed with statutory powers for something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. Further, it involves a consequence, that, if validly made, it has the force of law within the sphere of its legitimate operation.

A by-law however to be valid must be—

(a) *intra vires* the authority who makes it, that is, by-laws are *ultra vires* if they impose restrictions or if they are not authorised by the statute under which they are purported to be made. In every case the by-law must be so framed that its provisions come within the scope of the particular statute under which it is made ;

¹(1966) 70 N. L. R. 334.

² (1969) 72 N. L. R. 64.

- (b) it must be certain in its directions and operation so as to make it clear to all whom it concerns and what it requires to be done or not to be done ;
- (c) it must be reasonable. Among other grounds by-laws are considered to be unreasonable, for instance, if they are found to be partial and unequal in their operation as between different classes ; if they were manifestly unjust ; if they disclosed bad faith, if they involve oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men and the Court might well say, "Parliament never intended to give authority to make such rules ; they are not reasonable and *ultra vires*" ;
- (d) it must not be repugnant to the general law, namely, the statute law.

In this case we are concerned only with the alleged invalidity of the by-law 30 on the ground of its repugnancy to the general law, namely, the Butchers Ordinance.

The principles that could be gathered from the decided cases governing the circumstances under which a by-law is repugnant to the general law and therefore invalid may be recapitulated as follows—*Vide Powell v. May*¹—(1946), 1 A. E. R. 444 :—

- (a) It must not permit that which the statute expressly forbids ;
- (b) It cannot forbid that which the statute expressly permits ;
- (c) It can, of course, forbid that which otherwise would be covered by the common law, otherwise no prohibitory by-law could be valid. The by-law must necessarily add something to the common law as otherwise it will be idle ;
- (d) A by-law is not bad because it deals with something that is not dealt with by the general law ;
- (e) It must not alter the general law by making that lawful which the general law makes unlawful—*White v. Morley*² (1899) 2 Q. B. 34 ;
- (f) A by-law is not repugnant to the general law merely because it creates a new offence and says that something shall be unlawful which the law does not say is unlawful ;

¹ (1946) 1 A. E. R. 444.

² (1899) 2 Q. B. 34.

- (g) It is repugnant if it expressly or by a necessary implication professes to alter the general law of the land ;
- (h) It is repugnant if it adds something which is inconsistent with the provisions of the statute creating the same offence but if it adds something not inconsistent, that is not sufficient to make a by-law bad as repugnant—*Gentel v. Rapps*¹ (1902) 1 K. B. 160.

Against the back ground of these principles I have to consider the submissions of Mr. Ranganathan that by-law 30 is repugnant to the Butchers Ordinance. Mr. Ranganathan's submissions are briefly as follows :—

The Butchers Ordinance confers a right to the licensed butcher to carry on the trade of a butcher which includes the right to sell or expose for sale the meat of animals. The Butchers Ordinance further confers the right to sell meat obtained at any one of the slaughter houses prescribed in Section 14 of the Ordinance. The necessary implication is therefore that the licensed butcher can sell or expose for sale meat slaughtered at any one or more of these places. The repugnant by-law therefore restricts the licensed butcher's rights to sell meat only slaughtered in the Colombo Municipal Slaughter house. The decisions of Manicavasagar J. and Tennekoon J. proceeded on the view that the provisions of the Butchers Ordinance impliedly authorised the sale of meat of animals slaughtered in a public slaughter house or other places appointed by the public authority and the by-law in question restricts the sale of meat only to that of animals slaughtered in the Colombo Municipal Slaughter house and the by-law is therefore inconsistent with the provisions of the Ordinance.

If one reads Section 4 (1) and Section 2 together, the licensed butcher can carry on the trade of a butcher which includes either the slaughtering of animals or exposing for sale the meat of animals slaughtered in Ceylon. A licensed butcher can therefore either do both, slaughter animals and expose for sale the meat of animals slaughtered in Ceylon or he can restrict himself to either slaughtering the animals or only exposing for sale the meat of animals slaughtered in Ceylon. Let us take the case of a licensed butcher who does not wish to slaughter animals but who restricts himself to selling or exposing for sale the meat of animals slaughtered in Ceylon. On an analysis of the Butchers Ordinance it appears to me that such a person who wishes to carry on as a butcher must have :—

- (1) A licence issued to him by the proper authority who is defined in Section 3 ;

¹ (1902) 1 K. B. 160.

- (2) He could sell or only expose for sale meat of animals slaughtered in Ceylon—Section 2 ;
- (3) He shall not expose for sale or cause to be exposed for sale the flesh of any animal suffering from any disease—Section 15 (2) ;
- (4) He shall not sell or expose for sale or cause to be sold or exposed for sale the flesh of any animal that has been inflated with air—Section 15 (3).

Beyond these restrictions the Butchers Ordinance has no provision in regard to the nature or quality or other attribute that the meat that is exposed for sale must have, as this Ordinance mainly deals with the slaughter of cattle and has provisions for the establishment of slaughter houses.

On the other hand if a licensed butcher decides only to restrict his trade to that of slaughtering of animals then Section 14 in my view applies to such a person because this section reads as follows :—

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

- (a) the place appointed by the proper authority, or
- (b) any public slaughter house as hereinafter provided ;”

Section 14 to my mind only applies to a licensed butcher who if he wishes to slaughter any animal should do so at one or more of the appointed places. Section 14 nowhere states that the licensed butcher should only sell meat of animals which have been slaughtered at a place prescribed in Section 14. I will next consider the case of a person who carries on the trade of a butcher in the sense that he slaughters animals as well as exposes for sale the meat of animals slaughtered in Ceylon. The Butchers Ordinance nowhere states that the meat of any animal that is exposed for sale should be from any animal slaughtered at any one or more of the places prescribed in Section 14.

I am in agreement with the reasons given by Samerawickrame J. in the case of *Sebastian v. Ediriweera*¹ (72 N. L. R. 64). He says—

“It appears to me that in the absence of any provision in the Ordinance as to the meat of animals that may be 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 authorised and that it is not consistent with such provisions. Accordingly it follows that the by-law

does not prohibit what the provisions in the Ordinance impliedly authorised and that it is not inconsistent with the Ordinance.”

The Municipal authorities who have the duty to sell wholesome meat by recognised hygienic standards for human consumption were probably aware that the Butchers Ordinance did not deal with the specific question regarding the quality of meat that should be exposed for sale in the private or public markets established under the Municipal Councils Ordinance because on a reading of the Butchers Ordinance one finds that a licensed butcher can sell the meat of animals slaughtered anywhere even under the most unhygienic conditions. It is only the person who slaughters animals who has to comply with Section 14 of the Ordinance.

I wish to apply to the facts of this case the principles relied on by Channell J. in *White v. Morley*¹ (1899) 2 Q. B. 34, at 39—

“ A by-law is a local law, and may be supplementary to the general law ; it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful which the general law makes unlawful; or that unlawful which the general law makes lawful.”

This principle has been referred to in the case of *Powell v. May*² (1946) 1 A.E.R. 444. I must also refer to another principle laid down in *Gentel v. Rapps*³ (1902) 1 K. B. where Channell J. said at page 165—

“ On the question of repugnancy I repeat what I have said before. A by-law is not repugnant to the general law merely because it creates a new offence, and says that something shall be unlawful which the law does not say is unlawful.”

Nowhere in the Butchers Ordinance is it said that the sale by a licensed butcher of meat of animals not slaughtered in any one of the slaughtering houses prescribed under Section 14 is unlawful and therefore an offence. A by-law in my opinion is therefore entitled to fill this omission and lay down that only meat of animals slaughtered at a particular slaughter house could be exposed for sale at a public or private market established under the Municipal Councils Ordinance.

In construing whether a by-law is repugnant to the general law I am also mindful of the observations made by Darling J. in *White v. Morley* (*supra*), following *Kruse v. Johnson*⁴ (1898)

¹ (1899) 2 Q. B. 34 at 39.

³ (1898) 2 Q. B. 91.

² (1946) 1 A. E. R. 444.

⁴ (1902) 1 K. B. at 165

2 Q.B. 91 that the Courts should not look at by-laws of local authorities—the popular elected governing bodies of Boroughs and Counties—from the same point of view as they were in the habit of looking at the by-laws of railway companies and other like bodies, and that a larger discretion has to be given to these public representative bodies than is to private bodies.

The question before me is whether Section 14 of the Butchers Ordinance and the by-law deal with the same case. If they do then I must concede that there are grounds for repugnancy but I do not think so. Section 14 deals with only slaughtering of animals whereas by-law 30 deals with the sale or exposure for sale of meat of animals. I am fortified in coming to this conclusion by the approach made to the problem in the case of *White v. Morley* both by Darling J. and Channell J. This case incidentally was also referred to by Samerawickrame J. in the case of *Sebastian v. Ediriweera*. The London County Council made a by-law providing that no person should frequent and use any street or other public place for the purpose of betting under a penalty. By Section 23 of the Metropolitan Streets Act, 1867, any three or more persons assembling together in any part of the street for the purpose of betting shall be deemed to be obstructing the street, and each of them shall be guilty and a penalty is imposed. It was held that the by-law was not repugnant to Section 23 and was valid. Darling J. observed as follows :—

“The question, therefore, is whether this statutory enactment and this by-law do deal with the same case. I do not think that they do. It is true that they both deal with betting, and that they both deal with the obstruction of the streets. But that which is punishable under the one is not punishable under the other. The statute prohibits three persons meeting together and making bets in the streets. It does not say that one person may not use the streets for betting purposes ; neither does it say that he may do so. The by-law, on the other hand says that one person shall not frequent and use the streets for betting. That is quite a different thing from what the statute provides against. The statute prohibits three persons assembling together—that is, on any one occasion—in a street for the purpose of betting ; the by-law prohibits any one person frequenting and using a street or other public place for betting, whether other persons come to him there or not, provided that he frequents it. It seems to me, therefore, that the by-law and the statute deal with two different offences, and that the objection that the by-law is repugnant to the statute fails.”

Channell J. observed thus :

“The Metropolitan Streets Act makes the assembling together of three persons for something that is beyond the ordinary user of the highway an obstruction of the highway and punishable with a fine. Then the by-law makes a different thing an offence. It makes the frequenting of the place unlawful.”

I shall next consider the question whether by-law 30 even by necessary implication by confining the sale of meat only to animals slaughtered in the municipal slaughter house forbids and makes unlawful that which the general law has impliedly authorised. A good example of repugnancy by necessary implication is given in *Gentel v. Rapps*¹ (1902), 1 K. B. 160 at 166.—

“It is repugnant if it expressly or by necessary implication professes to alter the general law of the land. I say ‘by necessary implication’ because I have in mind the cases with respect to by-laws prohibiting persons from travelling on railways without a ticket. In those cases by-laws which impose the same penalty as the general law without making a fraudulent intention part of the description of the offence have been held to be bad, because the statute creating the offence says that there must be a fraudulent intention on the part of the person charged with travelling without a ticket, and the by-law, therefore, by implication alters the general law.”

The principle set out in this passage is illustrative of the need to restrict the meaning of the words “by necessary implication”, and not give it too elastic a connotation because if this is done the implications of every by-law can be stretched so as to give it an interpretation that will make it possible to be repugnant to some general law or other.

In the result I must respectfully say that I cannot agree with the conclusions arrived at both by Manicavasagar J. and Tennekoon J. in interpreting by-law 30 as *ultra vires* the Butchers Ordinance. The Butchers Ordinance nowhere expressly or by necessary implication states that the sale of meat can only be of meat of animals slaughtered at the places prescribed in Section 14 of the Butchers Ordinance. I must also say, with respect, that I do not agree with the reasoning of Tennekoon J. because the fallacy of his argument lies in the answer he gave to the manner in which the problem was erroneously posed to him. He states—

“The submission made by counsel for the appellant is that a licensed butcher gets the right not only to slaughter

¹ (1902) 1 K. B. 160 at 166.

animals but also the right to sell the meat of animals so *slaughtered*; it is then submitted that by-law 30 makes unlawful the sale of the meat within the Municipal Council area the meat slaughtered in a place 'appointed by the proper authority'. That is something by necessary implication made lawful to any butcher licensed under the Butchers Ordinance and for this reason the by-law is invalid. I agree with the submission."

Section 14 only deals with slaughtering of animals and has nothing to do with sales. I, therefore, agree with the very logical and practical conclusion arrived at by Samerawickrame J. when he states :—" I am, therefore, of the view that the 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".

No grounds have been urged against the findings of fact of the learned Magistrate. I hold that by-law 30 is not repugnant to and therefore not *ultra vires* the Butchers Ordinance. The convictions are affirmed, and the appeals are dismissed.

RAJARATNAM, J.—

I have had the opportunity of reading the reasons given by my brother for dismissing the appeals. I agree.

To my mind, however, there is a simple approach to these two questions, viz.—

- (1) Does Section 14 of the Butchers Ordinance give a right to a licensed butcher to slaughter animals both—
 - (a) at a place appointed by the proper authority and
 - (b) at any public slaughter house ?
- (2) Can a licensed butcher therefore be prevented by by-law 30 without repugnancy to s. 14 from selling or exposing for sale flesh of animals slaughtered at a place appointed by the proper authority and at any public slaughter house ?

The general definition of a butcher includes every person that slaughters animals or exposes for sale the meat of animals slaughtered in Ceylon. (Section 2 of the Butchers Ordinance)

A *licensed butcher*, however, under the provisions of this Ordinance is a butcher who is issued a licence on application, by the proper authority. The applicant is required under s. 7 of the said Ordinance to state the premises where he wishes to carry on his trade and in this particular case such premises are within the area of the Municipal Council of Colombo. The Mayor is the proper authority to issue the licence. The Mayor of the local authority concerned has a supervisory control of the licensed butcher and on certain grounds can revoke the licence. A butcher who has been licensed to carry on his trade in the premises he has disclosed in his application within the Colombo Municipality is licensed to carry on his trade within the administrative limits of the Colombo Municipality only. Therefore a licensed butcher cannot claim to have a right to slaughter his animals outside such limits at *any public slaughter house*. He can only slaughter at the place appointed by the proper authority if there is one so appointed or at a public slaughter house within such limits. Section 14 cannot be considered in isolation, it must be read with the other sections of the Ordinance and in the context of the other provisions, it is a prohibitive and restrictive section leaving only two places or two classes of places for licensed butchers to slaughter their animals. The Ordinance did not in detail specify all such appointed places or all such public slaughter houses in the island. It prohibited every place which did not fall within the category of an appointed place or a public slaughter house. It meant nothing more. Therefore one has to take into consideration which proper authority has licensed a particular butcher. If a licensed butcher licensed to carry on his trade in Colombo, is permitted under S. 14 to slaughter animals in Horana *in effect he will be carrying on his trade in Horana according to the definition of the term butcher which will be outside the scope and condition of his licence*. I cannot therefore agree with learned Counsel for the appellants that a licensed butcher has any right under the statute to slaughter animals outside the administrative limits of the proper authority. Under s. 14 such a licensed butcher is permitted to slaughter animals if there is a place appointed by the proper authority or at any public slaughter house within such limits. For the control and

supervision of its licensees and its markets the local authority is empowered to pass by-laws and by-law 30 is in no way repugnant to s. 14 of the Ordinance.

My answer to question (1) is in the negative. Section 14 contains a general prohibition and a general restriction to all licensed butchers in the country and if read with the other sections a licensed butcher cannot sell or slaughter outside the administrative limits of the proper authority. I do not say that s. 14 means anything more than that. I fail to understand how it can be said that thereunder, every licensed butcher can go about slaughtering animals in *any* public slaughter house in the country. My answer to question (2) will therefore not arise. Even if question (1) is answered in the affirmative, which in my view cannot be so answered, By-law 30 which regulates only the sale of meat is not repugnant to s. 14.

These appeals must therefore be dismissed.

Appeals dismissed.