

1958

Present : Weerasooriya, J.

ABDUL MAJEED, Petitioner, and J. B. RAJAPAKSE, Respondent

*S. C. 147—Application for a Writ of Mandamus on the Chairman, V. C.
Kanogama Village Area, Kanogama**Butcher—Application for issue of licence to sell meat—Rights of applicant—Butchers Ordinance (Cap. 201), ss. 7, 13A (1), 14—Village Communities Ordinance (Cap. 193), s. 49, By-law 32—Mandamus.*

The petitioner made this application under the Butchers Ordinance to the Chairman of the Kanogama Village Committee for the issue of a licence for the year 1958 for the sale of meat at certain premises within the Kanogama Village Committee area. The application was summarily refused by the Chairman without any reasons being given.

Held, that a writ of *mandamus* was available against the Chairman directing him to entertain the application and to deal with it in accordance with the provisions of the Butchers Ordinance. Neither an Order made under section 13A (1) of the Butchers Ordinance nor by-law No. 32 passed under section 49 of the Village Communities Ordinance was a bar to the issue of the writ.

APPPLICATION for a writ of *mandamus* on the Chairman, V. C., Kanogama Village Area, Kanogama.

E. B. Vannitamby, for the petitioner.

M. S. M. Nazeem, with *M. T. M. Sivardeen*, for the respondent.

July 15, 1958. WEERASOORIYA, J.—

The petitioner made an application dated the 20th February, 1958, to the Chairman of the Kanogama Village Committee for the issue of a licence for the year 1958 for the sale of meat at premises No. 111, Gan-suriyagahamullawatta situated in Bandarakoswatta within the Kanogama Village Committee area. By letter dated the 25th February, 1958, this application was summarily refused by the Chairman without any reasons being given. The petitioner has now come into this Court for a writ of mandamus on the Chairman, Village Committee of Kanogama, to compel him to entertain the application and to deal with it according to law.

The law applicable would be the provisions of the Butchers Ordinance (Cap. 201). The respondent to this application has filed an affidavit setting out the grounds for refusing the application for a licence. One of the grounds stated is that the application was not in conformity with the provisions of the Butchers Ordinance, but Mr. Nazeem who appeared for the respondent was unable to enlighten me in what respect the application failed to conform to the provisions of Section 7 of the Ordinance which is the section providing for applications of this nature. Another ground is that there is in operation an Order under Section 13 A (1) of the Butchers Ordinance prohibiting the slaughter of animals and the sale of beef within the area of the Village Committee of Kanogama as from the 1st January, 1956, and that in view of that Order the refusal to issue the licence was justified. But Section 13 A (1) only empowers the proper authority to prohibit the slaughter of animals, as was pointed out in the case of *Ismail v. Marasinghe*¹, and it was conceded by Mr. Nazeem that the Order relied on by the respondent is *ultra vires* in so far as it purported to prohibit the sale of beef.

A further ground relied on in the affidavit is the existence of a by-law (No. 32) which is one of certain by-laws purporting to have been made by the Village Committee of Kanogama under Section 49 of the Village Communities Ordinance (Cap. 198) and published in *Government Gazette* No. 10,147 of 1st September, 1950. By-law No. 32 is as follows:—

“No licensee of a meat stall shall sell or expose for sale in that stall the meat of any animal which has not been slaughtered in a public slaughter-house situated within the village area and declared and proclaimed under Section 21 of the Butchers Ordinance (Cap. 201), or in a place appointed for the purpose of slaughtering animals under Section 11 of that Ordinance, or under a permit issued under Section 14 of that Ordinance”.

Mr. Nazeem contended that even if the Order under Section 13 A (1) of the Butchers Ordinance be regarded as *ultra vires* in so far as it prohibited the sale of beef, by-law No. 32 amounts to a total prohibition against selling or exposing for sale the meat of any animal. I do not think, however, that by-law No. 32 can be given such an interpretation. It seems to me that the terms of that by-law do not preclude a licensed butcher from selling or exposing for sale within the area of the Village Committee of Kanogama the meat of any animal slaughtered on a permit issued under

¹ (1956) 58 N. L. R. 38.

Section 14 of the Butchers Ordinance by a proper authority other than the Chairman of the Village Committee of Kanogama or the meat of an animal which had been slaughtered in a place appointed under Section 11 of the Ordinance but outside the area of the Village Committee of Kanogama.”

I would, therefore, issue a writ of mandamus against the respondent directing him to entertain the application of the petitioner dated 20th February, 1958, and to deal with it in accordance with the provisions of the Butchers Ordinance.

The petitioner will be entitled to his costs which are fixed at Rs. 210.

Application allowed.

