

1970

Present : Siva Supramaniam, J.

O. L. M. M. CASSIM, Appellant, *and* THE OFFICER-IN-CHARGE, POLICE STATION, MORATUWA,
Respondent

S. C. 110/69—M. C. Panadura, 8723

Control of Prices Act, No. 29 of 1950—Sections 4 (1) and 8 (1)—Box of matches—Controlled maximum price thereof—Incapacity of Controller of Prices to fix the price—Manufacture of Matches Ordinance, No. 9 of 1938, ss. 10, 10 (4), 11 (1) (a)—Manufacture of Matches (Regulation) Act, No. 6 of 1963, ss. 5, 10 (1)—Rule of construction Generalia specialibus non derogant.

An order made by the Controller of Prices fixing the controlled maximum price of a box of matches is *ultra vires* the powers vested in him under the Control of Prices Act. The power of determining the maximum price in respect of matches manufactured in Ceylon has been specially vested in the Minister by the later Manufacture of Matches (Regulation) Act No. 6 of 1963.

¹ (1967) 70 N. L. R. at p. 138.

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

P. Nagendran, with *J. Wilson Fernando*, for the accused-appellant.

Priyantha Perera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 12, 1970. SIVA SUPRAMANIAM, J.—

The appellant was convicted of the offence of selling a box of matches for six cents in contravention of an order made by the Controller of Prices under s. 4 of the Control of Prices Act fixing the controlled maximum price of a box containing not less than 50 sticks at five cents and sentenced to 6 weeks' rigorous imprisonment and to a fine of Rs. 100, in default a further six weeks R.I.

The facts have not been contested in appeal. The conviction is challenged on a question of law, namely, that the order made by the Controller of Prices fixing the controlled maximum price of a box of matches is *ultra vires* the powers vested in him under the Control of Prices Act.

The relevant part of Section 4 of the Control of Prices Act No. 29 of 1950 reads as follows :—

“(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 any unreasonable increase in the price of any article, the Controller may by Order—

(a) fix the maximum price (both wholesale and retail) above which that article shall not be sold ;”

Acting under the said power, the Controller made an Order fixing the controlled maximum prices of various sizes of boxes of matches.

S. 8 (1) provides that every person who acts in contravention of any Order made under this Act shall be guilty of an offence.

Prior to the passing of the aforesaid Act the Legislature had enacted a special Statute relating to the Manufacture of Matches, Ordinance No. 9 of 1938, and section 10 of that Ordinance empowered the Minister to make regulations for the purpose of carrying out or giving effect to the principles and provisions of the Ordinance. One of the matters in respect of which he was specially empowered to make regulations was “the determination and notification of the minimum price below which or the maximum price above which matches shall not be sold either wholesale or by retail.” A regulation had accordingly been made by the Minister fixing the maximum price of matches.

S. 10 (4) provided that "a regulation made by the Minister when approved by the Senate and the House of Representatives shall, upon the notification of such approval in the Gazette, be as valid and effectual as if it were herein enacted". S. 11(1) (a) provided that "any person who commits a breach of any of the provisions of this Ordinance or of any regulation made thereunder. . . . shall be guilty of an offence."

It will be seen, therefore, that in respect of matches, the Ordinance gave a special power to the Minister to fix the maximum sale price and a sale in contravention of the price so fixed was punishable as an offence.

Under the rule of construction "*Generalia specialibus non derogant*", the general power conferred on the Controller of Prices under the Control of Prices Act would not have taken away the special power conferred on the Minister in respect of matches under the earlier statute.

The aforesaid Ordinance was, however, repealed in 1963 and a new Act called the Manufacture of Matches (Regulations) Act, No. 6 of 1963, was enacted in its place. Section 5 of that Act provides as follows :—

"(1) The Minister may from time to time by notification published in the Gazette determine the maximum price in respect of matches manufactured in Ceylon.

(2) No person shall sell or offer for sale any matches at a price in excess of the price so determined by the Minister."

Under S. 10 (1) any person who contravenes any provision of this Act or of any regulation made thereunder is guilty of an offence.

It was conceded by Crown Counsel that the Minister has, in fact, by notification, fixed the maximum prices above which the various types of boxes of matches should not be sold. He submitted, however, that there is no conflict with the Order made by the Minister as the Controller of Prices has adopted the same prices in the Order made by him under the Control of Prices Act. That the Controller has adopted the same prices is irrelevant to the question whether he had the power under the Control of Prices Act to fix the maximum prices above which the various types of boxes of matches should not be sold.

It is noteworthy that, both before and after the enactment of the Control of Prices Act, the legislature vested in the Minister a special power to fix the price in respect of matches. The legislature could not have intended to vest the same power at the same time in two different authorities.

Maxwell, in his Interpretation of Statutes (11th Edition page 161), says : "When a local Act empowered one body to name the streets and to number the houses in a town, and another local Act gave the same

power to another body, the earlier would be superseded by the later Act, for to leave the power with both would be to defeat the object of the legislature."

The special power vested in the Minister under the later enactment No. 6 of 1963 is inconsistent with the general power conferred on the Controller of Prices under the earlier enactment No. 29 of 1950.

The general power must therefore be deemed to be modified *pro tanto* in respect of the control of the price of matches. A person who sells matches in contravention of the price fixed by the Minister can be punished under the provisions of the Manufacture of Matches (Regulation) Act.

I am of opinion, therefore, that the Price Control Order in respect of matches made by the Controller was *ultra vires* his powers under the Act. The appellant, consequently, committed no offence by contravening it.

I allow the appeal, set aside the conviction and sentence and acquit the appellant.

Appeal allowed.
