

1970

Present : Samerawickrame, J.

**J. A. MARTIN COORAY, Appellant, and
SUB-INSPECTOR OF POLICE, BORELLA, Respondent**

S. C. 1157/67—M. M. C. Maligakande, 45073

Control of Prices Act (Cap. 173)—Section 4, subsections (3), (4), (5), (7)—Contravention of a Price Order—Whether Minister's approval of the Order should be proved by the prosecution.

In a prosecution for selling an article at a price above the maximum controlled price fixed by a Price Order, it is not necessary to prove that the Order had been approved by the Minister and that notification of the approval had been published in the *Gazette* in accordance with section 4 (7) of the Control of Prices Act. Once a Price Order has been made by the Controller, it becomes fully operative independently of any further efficacy it may receive from the subsequent approval of it by the Minister.

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

Colvin R. de Silva, with Harischandra Mendis and P. Tennekoon, for the accused-appellant.

Tyrone Fernando, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 17, 1970. SAMERAWICKRAME, J.—

The accused-appellant was convicted of an offence under the Control of Prices Act in that he sold Bombay onions above the maximum controlled price fixed by Price Order No. C 426 of 2.5.67.

Counsel for the appellant submitted that before the Price Order could be acted upon there should be proof—(a) that the Order had been approved by the Minister and that notification of the approval had been published in the *Gazette* in accordance with Section 4 (7) of the Control of Prices Act, and (b) that at least s. 4 (4) of the Control of Prices Act had been complied with and that s. 4 (5) of the said Act had been complied with or was in the process of being complied with.

Section 4 (3) of the Control of Prices Act provides :—

“ Every Order made under subsection (1) shall come into operation when such Order is made and signed by the Controller.”

Subsection (7) provides that upon approval by the Minister and notification of such approval in the *Gazette* the Order “ shall be deemed to be as valid and effectual as if it were herein enacted.” It would appear

therefore, that upon notification of the approval by the Minister in the *Gazette* in terms of subsection (7) the Order which has already come into operation is given additional status and is to be deemed as valid and effectual as if it were enacted in the Act. There may be cases where an Order is impeached on the ground that it is inconsistent with another order or some other provision of law and in such a case the prosecution may seek to meet the attack on it by relying upon the provision in subsection (7) upon proof of the notification of approval in the *Gazette*. In a case however such as this where the prosecution merely relies on the fact that the Order was in operation there is, in my view, no need for it to prove that there has been notification of approval in terms of subsection (7). In *Food and Price Control Inspector v. Piyasena*¹ Weerasooriya, J., considered this provision and stated at page 311, "These provisions make it clear, I think, that once an order has been made and signed (and also, perhaps, duly published) it becomes fully operative independently of any further efficacy it may receive from the subsequent notification of its approval by the Minister." With respect, I agree with that dictum.

Subsection (4) of section 4 requires public notice of the Order to be given forthwith after it is made in one of three modes and one mode is by publication of the Order in the *Gazette*. The *Gazette* in which the Order was published has been produced in this case and accordingly, subsection (4) has been complied with.

Subsection (5) provides :—

"Every Order shall, as soon as may be after the date on which it comes into operation, be placed before the Minister for consideration and the Minister may thereupon approve or rescind the Order."

Learned counsel submitted that there must be some evidence that there was compliance with the provisions of s. 4 (5). He submitted that the provisions of s. 4 (5) were imperative and that it was necessary that the Order should, within a reasonable time, be placed before the Minister and that a duty was cast on him to either rescind or approve the Order. I agree that compliance with subsection (5) is obligatory. It does not, however, follow that the prosecution must lead evidence of compliance with subsection (5) for an Order would be already operative before compliance with the provisions of subsection (5) arises.

It may be open to the defence to put before Court material which shows *prima facie* that no steps have been taken under s. 4 (5) to place the matter before the Minister or that the Minister has failed either to approve or rescind the Order. In such a case the Court may well require to be satisfied by the prosecution that there has been no default in complying with s. 4 (5). It is however unnecessary that I should decide this matter in the present case. The defence did not take up the

¹ (1955) 57 N. L. R. 310.

position that there had not been a compliance with subsection (5). It relied on the mere technical ground that proof of compliance with that provision had to be placed before Court by the prosecution.

I am of the view that the two grounds urged by counsel for the appellant why the Price Order should not have been acted upon fail. The appeal is therefore dismissed.

Appeal dismissed.
