

1956 *Present*; K. D. de Silva, J., and Sansoni, J.

M. J. SALGADO, Appellant, and THE CHAIRMAN, VILLAGE  
COMMITTEE, UDAPATTU, Respondent

*S. C. 1—Rural Court (Case Stated)*

*Village Communities Ordinance (Cap. 195)—Sections 46 (as amended by Act No. 8 of 1952) and 63—Licence issued by a Village Committee under a by-law—Licence duty not always necessary—By-law 1 of Local Authorities (Standard By-Laws) Part XIII.*

Although under section 46 of the Village Communities Ordinance, as amended by the Local Authorities (Enlargement of Powers) Act No. 8 of 1952, a Village Committee "may impose and levy on every licence" a licence duty at approved rates, it is not imperative that a duty should be imposed in respect of every licence issued by a Village Committee. Accordingly, carrying on the business of a provision store without obtaining a licence, in contravention of By-Law 1 contained in Part XIII of the Local Authorities (Standard By-Laws) Act No. 6 of 1952, is an offence punishable under section 63 of the Village Communities Ordinance, although a licence duty has not been fixed in respect of the required licence.

**C**ASE stated by the District Judge, Ratnapura, under the proviso to section 42 (5) of the Rural Courts Ordinance, No. 12 of 1945.

*B. A. R. Candappa*, for the accused-appellant.

*V. S. A. Pullenayegum*, as *amicus curiae*.

*Cur. adv. vult.*

July 11, 1956. DE SILVA, J.—

This is a case stated by the District Judge, Ratnapura, under the proviso to section 42 sub-section 5 of the Rural Courts Ordinance No. 12 of 1945. In *R. C. Kuruwita Case No. CRM 2161* one *M. J. Salgado* was charged with carrying on the business of a provision Store without obtaining a licence from the Chairman, Village Committee, Uda Pattu, Kuruwita Korale in contravention of By-law 1 contained in part XIII of Local Authorities (Standard By-laws) Act No. 6 of 1952 an offence punishable under section 63 of the Village Communities Ordinance (Cap. 198). The President convicted him of the charge and sentenced him to pay a fine of Rs. 35. He appealed to the District Judge who has now stated a case for the opinion of the Supreme Court on a question of law arising out of the appeal. The By-law in question reads as follows :—

“ No person shall keep any shop or place (other than a market) for the sale of meat, poultry, fish, vegetables or other perishable articles of food except on a licence duly obtained in that behalf from the Chairman. Every such licence shall expire on the 31st day of December in each year. ”

It is admitted that this By-Law was adopted by the Village Committee in question. It was contended by the accused appellant in his petition of appeal that the charge against him cannot be maintained as the licence duty in respect of a shop referred to in the By-Law in question has not been prescribed. The point of law arising out of the appeal has been stated by the District Judge in the following terms :—

“ In the absence of proof that the licence duty has been fixed in respect of a Provision Store under this by-law the question is whether the appellant has contravened the by-law in that he has not duly obtained a licence from the Chairman. ”

This question must be answered in the affirmative. It is true that according to section 46 of the Village Communities Ordinance (Cap. 198) as amended by the Local Authorities (Enlargement of Powers) Act No. 8 of 1952 a Village Committee “ may impose and levy on every licence ” a licence duty at approved rates. This does not mean that it is imperative that a duty should be imposed in respect of every licence issued by the

Village Committee. It is in the discretion of the Village Committee to impose a licence duty or not. There are instances where licences have to be obtained although no licence duty is payable. The by-law in question requires every shop to which it applies to have a licence. If therefore no licence is taken out in respect of such a shop a contravention of the by-law takes place. Section 63 of the Village Communities Ordinance (Cap. 198) makes such contravention a punishable offence. The conviction of the accused in this case therefore is warranted by law.

SANSONI, J.—I agree.

*Appeal dismissed.*

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