

## [IN THE COURT OF APPEAL OF SRI LANKA]

1973 Present : Fernando, P., Sirimane, J., Samerawickrame, J.,  
and Tennekoon, J.

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

APPEAL No. 6 OF 1973

S. C. 1037-1038/69—M. M. C. Colombo, 36527

Colombo Municipal Council—By-law 30 of Chapter XIII of the By-laws of 1905—Prohibition therein of sale, or exposure for sale, of meat of any animal not slaughtered at the Municipal slaughter house—Validity in regard to the meat of cattle—By-laws 23 and 36 (i) of Chapter XII—Interpretation Ordinance (Cap. 2), s. 17 (1) (c)—Butchers Ordinance (Cap. 272), ss. 3, 4, 5, 14, 15 (1) 18 to 24, 26, 27—Municipal Councils Ordinance, ss. 267 (2), 272 (8).

By-law 30 of Chapter XIII of the By-laws and Regulations of the Colombo Municipal Council published in the *Government Gazette* of 20th October 1905 reads as follows:—

“Except as 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 provisions 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.”

*Held*, that by-law 30 is not *ultra vires* in so far as it prohibits any person, including a butcher licensed under the Butchers Ordinance, from selling or exposing for sale in the Colombo Municipal area the meat of any cattle not slaughtered at a Municipal slaughter house.

While there are cases in which a by-law may be wholly invalid, there may also be cases in which it is invalid as to part but valid as to another part. The only question that arose in the present case was whether by-law 30 was within the powers of the Municipal Council in so far as it sought by the use of the words “carcase (or meat) of any animal” to include the “carcase (or meat) of any cattle”.

*Held further*, that what by-law 23 prohibits is not an exposure of meat for sale but the removal of meat from the slaughter house without the prescribed pass.

**A**PPEAL from a judgment of the Supreme Court reported in (1973) 76 N. L. R. 133.

M. Tiruchelvam, with S. G. Wijesekera and Miss Luxmie Goonewardena, for the accused-appellants.

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

*Cur. adv. vult.*

November 12, 1973. TENNEKOON, J.—

The question that arises in this case is the validity of a by-law made by the Colombo Municipal Council as far back as 1905.

2. The by-law in question reads as follows :—

“ Except as 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 provisions 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. ”

This by-law is hereinafter referred to as ‘ by-law 30 ’.

3. The two accused-appellants were charged in the Municipal Magistrate’s Court on two counts. The first count reads 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 carcase 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. 6080 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. ”

4. On the evidence the Magistrate found that the two appellants (the second being a licensed butcher and the first his employee) had exposed for sale 77 pounds of buffalo meat and that this meat was not that of a buffalo slaughtered at the Municipal Slaughter House ; he convicted them and passed sentence. An appeal was taken to the Supreme Court ; the only ground urged in support of the appeal was that by-law 30 was invalid as being inconsistent with the provisions of the Butchers Ordinance (Cap. 272). The Supreme Court dismissed the appeal, holding that the by-law was *intra vires*. After leave obtained, an appeal was taken to this Court ; here again the only ground urged before us by Counsel for the appellant was that the Supreme Court erred in holding the by-law *intra vires* the Council.

Judicial control of subordinate Legislation is well recognised in our Courts ; it needs no re-statement that all laws made subordinately by virtue of statutory delegation are subject to the test whether or not they fall within the limits of the power conferred on the delegate. One of the general limitations on the powers of a delegated law making authority is that contained in Section 17(1) (c) of the Interpretation Ordinance (Cap. 2). It says that no rule, regulation or by-law shall be inconsistent with the provisions of any enactment. This provision gives statutory recognition to the principle of repugnancy which has frequently been applied by the English Courts in examining the validity of subordinate legislation. Channell J. in *White v. Morley*<sup>1</sup> said :—

“ 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. ”

The same Judge in a later case *Gentel v. Rapps*<sup>2</sup> said :—

“ 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. ”

It seems to us that in considering whether a by-law is inconsistent with an enactment of Parliament, one must have regard not only to the express provisions of the impugned by-law and of the enactment but also to the necessary implications of the by-law and the enactment—see in this connection the judgment of Channell J. in *Gentel v. Rapps* (Supra) at page 166.

The contention for the appellants has been that by-law 30 is wholly *ultra vires* in that it renders it unlawful to sell or expose for sale the meat of *all animals* other than the meat of animals (of whatever category) slaughtered at a Municipal slaughter house. By-law 30 is not one made under the Butchers Ordinance but under the Municipal Councils Ordinance. The latter contains no statutory definition of the word “ animal ”, nor is there such a definition in the by-laws of the Council. By-law 30 may thus apply to a wider category of animals than is contemplated in the Butchers Ordinance in which the word “ animal ” is interpreted thus—

“ Animals shall include cattle, sheep, goats, pigs and turtles ” and the word “ cattle ” thus—

“ Cattle shall include oxen, bulls, cows, calves and tame buffaloes. ”

<sup>1</sup> (1899) 2 Q. B. 34 at 39.

<sup>2</sup> (1902) 1 K. B. 160.

Again the Butchers Ordinance contains special provisions in regard to "cattle" which are not applicable to other species of animals falling within the meaning of that expression—see subsection (1) of Section 15, Sections 18 to 24 and Section 27 of the Butchers Ordinance.

In this situation we do not think it necessary or desirable, when examining the validity of by-law 30 to travel beyond the needs of the case and to deal with the validity or invalidity of so much of by-law 30 as is not sought to be applied in this case. We are only concerned in this case with the question whether the by-law is valid in so far as it applies to the sale or exposure for sale of the meat of "buffaloes" which fall under the category "cattle". We are not concerned, for instance, with its validity in so far as it applies to sheep, goats, pigs and turtles. While there are cases in which a by-law may be wholly invalid, there may also be cases in which it is invalid as to part but valid as to another part. The only question that arises in this case is whether by-law 30 is within the powers of the Council in so far as it sought by the use of the words the "carcase (or meat) of any *animal*" to include the "carcase (or meat) of any cattle". A Court will strike down a law only to the extent of the inconsistency or repugnancy. We recognise of course the principle that if the inconsistent portion is not severable from the consistent portion the whole of the by-law must be struck down. The word "animal" is capable of being split up into the various species of animals connoted by that expression and we see no problem caused by the principle of severability in dealing with the question of *vires* in relation to the one species with which we are concerned in this case viz. "cattle" rather than with the whole genus of "animals". For these reasons we think it is sufficient to consider, for the purposes of this case, only the question whether by-law 30 is *ultra vires* in so far as it applies to the carcase or meat of *cattle* without proceeding to consider its validity in its application to other species of animals.

By-law 30 renders it unlawful for any person, including a butcher licensed under the Butchers Ordinance, to expose for sale in Colombo the meat of any animal slaughtered at any place other than a Municipal Slaughter House; (there would appear to be only one Municipal Slaughter House in Colombo viz. the slaughter house established under Section 27 of the Butchers Ordinance and situated at Baseline Road).

The Butchers Ordinance makes provision for the annual licensing of persons who wish to engage themselves in the slaughter of animals or in the sale of the meat of animals slaughtered in Ceylon (Sections 4 and 5). Licences are issued in relation to local areas by the proper authority for each area (Section 3). The licence must conform as near as may be to the scheduled form which reads as follows :—

### GENERAL LICENCE FOR BUTCHERS

\_\_\_\_\_ has permission to slaughter animals and carry on the trade at \_\_\_\_\_ of a butcher, conforming himself to the Butchers Ordinance.

This licence is to be in force till the 31st day of December, 19\_\_\_\_\_.

Then there is provision in Section 14 to the following effect :—

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

- (a) a place appointed by the proper authority, or
- (b) any public slaughter house as hereinafter provided ;  
nor between the hours of 6.00 p.m. and 6.00 a.m.”

Provision for the establishment of public slaughter houses is contained in Section 26.

It is evident from the provisions of Sections 3, 14 and 26 that the power to “appoint a place” for the slaughter of animals, and the power to certify a building as sufficient for the purposes of a public slaughter house and so to initiate action for the establishment of a public slaughter house is vested in the “proper authority” for each area as defined in Section 3. In the case of the Colombo Municipal area the “proper authority” to issue a Butchers Licence, to appoint a place for the slaughter of animals and to initiate action for the establishment of a public slaughter house is in each case the Mayor.

A person who wishes to trade as a butcher and sell meat in the Colombo area has thus to obtain a licence from the Mayor. His licence will authorise him not only to expose meat for sale but also to slaughter animals within the Colombo Municipal area ; he may get meat for purpose of his trade from elsewhere, but, if he so chooses he can slaughter animals, for the purpose of the sale of the meat thereof, at the Municipal Slaughter House or at the place appointed by the Mayor for the slaughter of animals. Where a licensed butcher does so he does a lawful

act; no adverse consequence flows from the doing of a lawful act. The question then is can the Municipal Council in the exercise of its powers of making by-laws in relation to markets under Section 272 (8) of the Municipal Councils Ordinance make a by-law which renders unsaleable the meat of animals lawfully slaughtered at a place at which the butcher is authorised by law to slaughter, *by reason only of the fact that the flesh comes from an animal slaughtered at such authorised place*. By-law 30, it will be remembered, prohibits sale or exposure for sale only by reference to the place of slaughter. Thus, under that by-law, if a butcher has slaughtered an animal at "the place appointed" by the Mayor for the slaughter of animals, the meat of such animal is prohibited of sale merely by reason of the fact of the slaughter of the animal having taken place at the "place appointed" by the Mayor; and this would be so, however good the quality and condition of the meat. If this can be validly done, by-law may also prohibit the sale of the meat of an animal slaughtered at the public slaughter house by reason of that fact alone.

We think therefore, that there is a necessary implication in the Butchers Ordinance that sale or exposure for sale by a licensed butcher of the meat of an animal slaughtered at a place authorised under Section 14 of the Ordinance is lawful, where lawfulness of exposure for sale is tested only by reference to the place of slaughter of the animal; and that a by-law which makes unlawful the sale or exposure for sale of meat by reference only to the place of slaughter of the animal would be inconsistent with the Butchers Ordinance in so far as it prohibits a butcher from selling the meat of an animal slaughtered at any place at which it was lawful for him to slaughter the animal; a necessary implication of such a by-law would be to render a place recognised under the Butchers Ordinance as one in which he may lawfully slaughter animals a place where a butcher may not slaughter animals by introducing a sanction in the way of a prohibition of the sale of the meat of an animal slaughtered at such a place.

However, the matter does not end there. Having regard to the meaning and effect of Section 14 of the Butchers Ordinance there is a factual background in which the impact of by-law 30 must be considered.

There is no implication in Section 14 that the proper authority for each area must provide both an "appointed place" under sub-section (a) and a public slaughter house under Section 26. In the less developed areas of this country there would only

be “appointed places” for slaughter of animals; and no public slaughter house; it is only when the proper authority is in a position to provide the necessary buildings, staff and finances that it may take action under Section 26 to provide a more sophisticated institution in the shape of a public slaughter house for the slaughter of animals.

When a proper authority has in fact provided a public slaughter house it is almost inevitable that there will be a discontinuance of the practice of appointing a “place for the slaughter of animals” under Section 14 (a). This stage seems to have been reached in respect of the Colombo Municipal Council in the early years of this century when by-law 30, and also a group of regulations under Section 27 of the Butchers Ordinance dealing with public slaughter houses in the Municipal area, were made and promulgated in 1905. The promulgation of this by-law is only consistent with a contemporaneous abandonment of any previous practice of appointing “a place for the slaughter of animals” under Section 14 (a). Indeed Counsel for the appellants did not venture to suggest that there was a “place appointed for the slaughter of cattle” under Section 14 (a) in Colombo where the buffalo in question might have been slaughtered. Counsel for the respondent appearing as he does for an officer of the Colombo Municipal Council was, after inquiry, in a position to state that our inference that there was no “place appointed” under Section 14 (a) for the slaughter of cattle in Colombo is correct; there was only a public slaughter house known as the Municipal Slaughter House situated at Baseline road, which was therefore the only place in the Colombo Municipal area at which a licensed butcher could lawfully slaughter cattle.

We conclude therefore, that the contention that by-law 30 is inconsistent with the Butchers Ordinance in that it renders unlawful the exposure for sale of the meat of cattle slaughtered at a “place appointed by the proper authority” must be rejected for the reason that in order to succeed in such a contention there must be a showing that there was in fact a “place appointed” for the slaughter of cattle under Section 14 (a) at the time the by-law was made or that there is such a place now; this the appellants have failed to do.

A further submission was that inconsistency with the Butchers Ordinance arose in another way; a butcher’s licence enabled a person to sell meat irrespective of the place of slaughter of the animal whose meat is exposed for sale; from this it was sought to be argued that the Butchers Ordinance made it lawful for a licensed butcher to sell not only the meat of animals slaughtered

by him at authorised places in the area for which the licence is operative but also the meat of animals lawfully slaughtered in any other part of the Island.

We find no difficulty in holding that the Butchers Ordinance *does not make it unlawful* for a butcher to expose for sale in the area for which his licence is operative the meat of animals lawfully slaughtered in another area; in this we agree with the statement of Gratiaen J. in the case of *Ismail v. Marasinghe*<sup>1</sup> where he said—

“The (Butchers) Ordinance in its original or amended form does not make it unlawful for a butcher ‘to expose for sale’ in one area the meat of animals that have been lawfully slaughtered in another part of the Island.”

But the considerations that have led us to conclude that a by-law of the Council may not attach a stigma of unsaleability (on the basis of the place of slaughter) to the meat of an animal lawfully slaughtered in Colombo by a butcher acting under the authority of a licence granted by the Mayor of Colombo, have no application to the meat of animals slaughtered by other butchers in other areas under the authority of different licences granted in respect of those other areas by the “proper authorities” for those areas; nor even to the meat of animals slaughtered by a butcher outside the area of his licence under the authority of a separate licence operative in respect of that other area. Each licence is a separate document operative only in respect of the area of the proper authority by whom it was issued. While the Butchers Ordinance does not make unlawful the sale of the meat of animals lawfully slaughtered outside the Colombo Municipal area, it does not, either expressly or by necessary implication, make lawful sale of such meat in the Colombo area.

Counsel for the respondent has drawn our attention to the fact that there is in fact a by-law, viz. by-law 36 (i) Chapter 12 of the by-laws and Regulations of the Colombo Municipal Council, which deals with the sale or exposure for sale of the meat of

<sup>1</sup> (1956) 58 N. L. R. 38 at 40.



animals slaughtered beyond the Municipal limits. This by-law as amended in 1959 reads as follows (Vide Gazette No. 11,680 of 27th February, 1959) :—

“ 36 (i) No person shall sell or expose for sale within the limits of the Municipality—

(a) the meat of any sheep, goat, cattle, pig or poultry slaughtered outside the limits of the Municipality ; or

(b) any meat (whether chilled, frozen, salted, smoked or otherwise preserved) imported into the Island, unless such meat has been inspected and passed as fit for human consumption by the Chief Municipal Veterinary Surgeon or by an officer authorised in that behalf by the Municipal Commissioner ;

Provided that the preceding provisions of this by-law shall not apply to any meat sold in hermetically sealed tins.”

Thus it appears to us that the contention of the appellants that by-law 30 prohibits the sale within the Colombo Municipal limits the meat of animals slaughtered outside that area is without foundation. By-law 30 itself starts with the words “ except as provided in these by-laws ” ; the effect of by-law 36 (i) of Chapter 12 is to create an exception to the general prohibition contained in by-law 30 of the sale of the meat of animals not slaughtered at a Colombo Municipal slaughter house. It was open to the appellants to establish that the buffalo whose meat was exposed for sale by the appellants, was (if such was indeed the case) slaughtered outside the Municipal limits and that the meat had been brought into the Municipal area in compliance with the requirements of by-law 36 (i) quoted above. This they have failed to do.

For the reasons that have been stated above we hold that by law 30 is not *ultra vires* in so far as it prohibits the sale or exposure for sale in the Colombo Municipal area of the meat of any *cattle* not slaughtered at a Municipal slaughter house.

Before leaving this part of the judgment we would like to refer to three cases in which the same question was considered by the Supreme Court. In two cases, namely, *Lafir v. Ediriweera*<sup>1</sup> and in an unreported case S. C. No. 110/66<sup>2</sup>, the Supreme Court held that by-law 30 was *ultra vires* the Butchers Ordinance and in *Sebastian v. Ediriweera*<sup>3</sup> the Supreme Court held that by-law was *intra vires*. In the first two cases the Supreme Court took the view that by-law 30 was inconsistent with the provisions of the Butchers Ordinance for the reason that it prohibited the sale of meat of animals slaughtered even at a "place appointed" for the slaughter of animals by the Mayor under Section 14(a); the Court failed to take note (indeed it was not brought to the attention of Court) that there was not at any relevant time a "place appointed" for the slaughter of animals under Section 14(a). Had this been done, the decisions in those two cases would, we think, have been different. In the third case *Sebastian v. Ediriweera*<sup>3</sup> where the Supreme Court held that by-law 30 was not *ultra vires*, the absence of a place appointed for the slaughter of animals under Section 14(a) in the Colombo Municipal area appears to have been decisive for the Court in reaching the conclusion that by-law 30 was valid. At page 66 of Justice Samerawickrame's judgment in that case there is the following statement:—

"It was not suggested nor is there any evidence that there is within the Municipal limits of Colombo any other public slaughter house or any other place appointed by the proper authority for the slaughter of animals within the meaning of Section 14 of the Butchers Ordinance. So far, therefore, as a butcher who is licensed under the Butchers Ordinance in respect of any area within the administrative limits of the Municipal Council of Colombo is concerned, the by-law does not have the effect of restricting the places at which he may slaughter animals."

We agree with the conclusion reached in that case in regard to the validity of by-law 30 in so far as it applies to the carcasses or meat of cattle.

<sup>1</sup> (1966) 70 N. L. R. 334.

<sup>2</sup> S.C. Minutes of 26th March, 1968.

<sup>3</sup> (1969) 72 N. L. R. 64.

There is one other matter which we must refer to before concluding this judgment. The two appellants were also charged (and convicted) on a second count which reads as follows :—

“ (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. 6080 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. 8212 of 8th April, 1936.”

Rule 23 referred to in this count is hereinafter referred to as by-law 23. By-law 23 reads as follows :—

“No person shall remove any meat, skin, entrails, or offal of any animal slaughtered at the public slaughter house without its being accompanied by a Pass, in the form authorised by the Chairman, signed by the Superintendent of the Slaughter-house or other officer appointed to issue such passes, and the person removing such meat, skin, entrails or offal shall produce such pass or passes for inspection on demand by any Municipal Officer ; and should such person fail to do so, such meat, skin, entrails, or offal shall be liable to be seized and removed to the Municipal Office or to a Police Station, to be disposed of as may be directed by the Chairman of the Municipal Council, without any compensation to the owner.”

Count 2 alleges as a breach of by-law 23 the act of exposing for sale 77 pounds of buffalo meat without a Pass issued by an officer of the Municipal Slaughter house ; what by-law 23 prohibits is not the exposure for sale but the removal from the slaughter house of the meat of any animal slaughtered there without it being accompanied by a pass issued by an officer of the slaughter house. The conviction of the two accused-appellants of count 2 is therefore, in respect of an act not made punishable under by-law 23. Further in order to sustain a charge under by-law 23 the prosecution had to establish among other things

that the 77 pounds of buffalo meat found in the stall of the appellants was the meat of a buffalo slaughtered at the Municipal slaughter house, and that it was the accused-appellants who removed that meat from the slaughter house. The Magistrate has found (and that finding was not questioned before the Supreme Court nor is it challenged here) that the buffalo whose meat was exposed for sale was not in fact slaughtered in the Municipal slaughter house. Thus, the prosecution has in count 2 not only charged the two appellants with an offence unknown to the law but it has also failed to establish even the facts which upon a proper charge under by-law 23 were necessary for a conviction. The conviction of both accused-appellants on count 2 is accordingly be quashed.

In the result the conviction of and the sentences imposed on the two accused-appellants on count 1 are affirmed, and convictions and sentences on count 2 are quashed.

*Conviction on count 1 affirmed*

*Conviction on count 2 quashed*

---