1967 *Present :* **Alles, J.**

H. R. PODI APPUHAMY, Appellant, *and* THE GOVERNMENT AGENT, KEGALLA, Respondent

S. C. 635/1967—M. C. Kegalla, 59559

Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249), as amended by s. 22 of Finance (No. 2) Act No. 2 of 1963—Section 2 (7)—Order made by Minister—Requirement that it should be laid before House of Representatives within a specified period—Effect of non-compliance—Control of Prices Act, s. 4 (3)—Holidays Act No. 17 of 1965, ss. 11 (4), 12 (2)—Ceylon Tourist Board Act of 1966, s. 48—Interpretation of statutes—Delegated legislation—Point of time at which it becomes valid.

An Order made by the Minister under section 2 of the Heavy Oil Motor Vehicles Taxation Ordinance, as amended by section 22 of the Finance (No. 2) Act No. 2 of 1963, is valid even though there is no strict compliance with sub-section 7 (*b*) of that Section by its being laid before the House of Representatives on a date subsequent to the termination of the specified period. The provisions of section 2 (7) (*b*) are not mandatory. The Order, therefore, in such a case, can be utilised for the imposition of tax at the altered rate.

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

M. M. Kumarakulasingham, with *C. Ganesh,* for the defendant-appellant.

N. Tittawella, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 11, 1967. ALLES, J.—

In this appeal Counsel has questioned the validity of an Order made by the Minister under the Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249), as amended by Section 22 of the Finance (No. 2) Act No. 2 of 1963, under which the Government Agent, Kegalle, filed a certificate in the Magistrate's Court seeking to recover from the appellant a sum of Rs. 3,948 as tax for the period 1.11.64 to 30.9.65.

Section 22 of the Finance Act introduced a new sub-section to section 2 of the Heavy Oil Motor Vehicles Taxation Ordinance and reads as follows :—

" (7) (*a*) The rates prescribed in the First Schedule to this Ordinance may, from time to time, be varied by the Minister of Finance by Order published in the Gazette.

(*b*) Every Order made under paragraph (*a*) of this sub-section shall come into force on the date of its publication in the Gazette or on such later date as may be specified in the Order, and shall be brought before the House of Representatives within a period of one month from the date of the publication of such Order in the Gazette, or, if no meeting of the House of Representatives is held within such period, at the first meeting of that House held after the expiry of such period, by a motion that such Order shall be approved. There shall be set out in a Schedule to any such motion the text of the Order to which the motion refers.

(*c*) Any Order made under paragraph (*a*) of this sub-section which the House of Representatives refuses to approve shall, with effect from the date of such refusal, be deemed to be revoked but without prejudice to the validity of anything done thereunder. Notification of the date on which any such Order is deemed to be revoked shall be published in the Gazette."

When this same point was raised at the trial, the learned Magistrate took the view that sub-section (7) (*c*) validated the Order but in my opinion he was in error in so holding because there was never a refusal of approval by the House as contemplated by this sub-section.

The Order made under sub-section (7) (*a*) has been produced and marked P2 and was published in the Gazette of 29.4.63 prescribing the new rates to be effective from 1.5.63. According to the evidence of the Clerk Assistant to the House of Representatives the first meeting of the House within a period of one month from the date of the publication of P2 was on 17.7.63, on which date, according to (7) (*b*), the Order should have been brought before the House, but the Order was in fact brought up only at the fifth session which took place on 20.8.64. Counsel therefore submits that in view of the non-compliance with the provisions of sub-section (7) (*b*), P2 was not valid and therefore could not be utilised for the imposition of any tax. It was Counsel's submission that the requirement of bringing the Order before the House within the specified period was mandatory and he sought support for his view from a passage from De Smith on Judicial Review of Administrative Action where the learned author was dealing with the subject of delegated legislation and in particular with the Statutory Instruments Act of 1946. That Act provided in section 2 (1) that when a statutory instrument was made it shall be sent to the Queen's Printer, numbered and printed and sold and in section 4 (1) that where any instrument was required to be laid before Parliament after being made, a copy must be laid before both Houses and shall be so laid before the instrument comes into

operation. De Smith was of the view that the rules governing printing and issue are no more than directory. In regard to laying before Parliament he states as follows :—

> " If, however, the instrument is required to be laid before Parliament, it is arguable that the instrument acquires legal validity only when it is so laid. It is true that laying requirements have generally been regarded as directory both by the courts and by learned commentators ; but the wording of the 1946 Act is very strong and there is a recent dictum to the effect that these words are to be read in their literal sense ; moreover, the duty to lay an instrument before Parliament, especially when it is accompanied by a provision for the annulment or affirmation of the instrument by resolution, is a constitutional safeguard of some value, and an omission to carry out this duty ought not to be lightly regarded."

Counsel submits on a parity of reasoning that in the instant case the requirement in sub-section (7) (*b*) is mandatory particularly since the word ' shall ' is used in the sub-section.

There is no provision of law in Ceylon corresponding to the Statutory Instruments Act and in order to ascertain whether the particular piece of subordinate legislation has the force of law at the time of its publication in the Gazette or after it has been approved of by Parliament, one must examine the terms of the Statute under which the legislation is made and the language used. In Ceylon (and it must be so in England as well—vide the proviso to section 4 (1) of the Statutory Instruments Act) all subordinate legislation need not pass the scrutiny of Parliament before it is declared to have the force of law and Parliament can decide whether it should have such force or not. Subordinate legislation made under the Revenue laws or orders made under the Control of Prices Act to be effective must have the force of law at the time of its publication in the Gazette and not await the approval of Parliament. Crown Counsel has drawn my attention in this connection to several statutes under which this distinction is appreciated. Under section 4 (3) of the Control of Prices Act an Order made by the Controller of Prices " shall come into operation when such Order is made and signed by the Controller ". Under section 11 (4) of the Holidays Act No. 17 of 1965 all regulations made by the Minister under the Act shall have effect only after it has been approved by the Senate and the House of Representatives and until notification of such approval is published in the Government Gazette. The same Act in section 12 (2) states that an Order made by the Minister under section 12 (1) shall come into force on the date of its publication in the Gazette or upon such later date as may be specified thereunder. Under section 48 of the Ceylon Tourist Board Act of 1966 an Order made under section 47 would come into force upon the date of its publication in the Gazette. There is therefore no uniformity with regard to the procedure that has to be followed in Ceylon in regard to the time at which delegated legislation becomes valid.

The question whether words similar to that found in sub-section (7) (*b*) are mandatory or directory has been the subject of discussion by

commentators. Craies (Statute Law 9th Edn. p. 317) seems to take the view that requirements relating to time are only directory in nature. In the latest edition of Allen ' Law and Orders ' (1965) the following passage appears at pp. 145 and 146 :—

" If the statute expressly indicates what the effect of non-compliance is to be, the matter is plain ; but in many cases it merely gives its command and says nothing about the consequences of disobedience. The courts then have to look at the general intendment of the section, and often of the whole statute, and, although there can be no invariable rule, the general principle of interpretation is well stated by Maxwell :

' Where the prescriptions of a statute relate to the performance of a public duty ; and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. '

Although it is a little startling to say that a command to lay Ministerial regulations before the Legislature is ' a mere instruction for the guidance and government of those on whom the duty is imposed ', it is believed that this principle is applicable to Statutory Instruments which are required to be laid and are subject to negative resolution. I understand that this view has always been held in the departments, and it is supported by the fact that it is not uncommon to insert in statutes a provision that if a Statutory Instrument is annulled within the prescribed period, this shall be without prejudice to acts done before the annulment. The same proviso is often made even for Statutory Instruments which depend on positive Parliamentary resolution for their confirmation or continuance. In both cases the assumption is that the sub-legislation is valid from the beginning, but *sub condicione*. It is, in the phrase which is associated with a bond, ' defeasible on condition subsequent '. "

In the present case the Order is to *come into force* on the date of its publication in the Gazette (language similar to some of the local Statutes referred to earlier) and also requires ' a positive Parliamentary resolution for its confirmation or continuance '. The sub-section merely ' gives its command and says nothing about the consequences of disobedience ' and the general principle of interpretation stated by Maxwell in the above passage would be applicable particularly in regard to the functions of the Government Agent who issues the certificate and has no control over the proceedings in the House.

I am inclined to adopt the principles laid down by Allen and hold that in this case, even though there is no strict compliance with sub-section (7) (*b*), the Order P2 is a valid Order under which a certificate could be issued for the recovery of the tax. I would therefore dismiss the appeal.

Appeal dismissed.