

1946

*Present : Wijeyewardene J.*

WATSON, Appellant, and RAMIAH, Respondent.

661—*M. C. Hatton, 7,890.*

*Food Control Regulations—Duty of Superintendent of an Estate to sell rice to all persons resident on the Estate—Meaning of the term “resident”.*

Where R, a Supervising Kangany on an estate, was dismissed from his post but continued to remain on the estate and live with his wife who was a labourer on the estate—

*Held*, that R was a person whom the Superintendent of the estate was bound, under Regulation 4 (1) in Part II (Head E) of the Food Control Regulations, to supply with rice.

**A** PPEAL against a conviction from the Magistrate's Court, Hatton.

*L. A. Rajapakse, K.C.* (with him *S. P. Wijeyewickreme*), for the accused, appellant.

*M. M. Kumarakulasingham*, for the complainant, respondent.

*A. C. M. Ameer, C.C.*, as *amicus curiae*.

*Cur. adv. vult.*

October 15, 1946. WIJEYWARDENE J.—

The accused was charged with having refused to sell or issue supplies of rice to Ramiah on December 15, 22 and 29, 1945, in breach of Regulation 4 (1) in Part II. (Head E) made under the Food Control Ordinance and published in the *Gazette* No. 8,397 of September 27, 1938.

The Magistrate convicted the accused and sentenced him to pay a fine of Rs. 150.

The accused has been the Superintendent of Ythanside estate, Kotagala, from August, 1942. Ramiah has been on that estate from about 1940. In September, 1945, the accused informed Ramiah and three others that he could not employ them any longer as Supervising Kanganies but they could do "any other labourer's work including pruning". The accused took this step as the Estate Agents desired that the number of Supervising Kanganies on the estate should be reduced. Though the other three Kanganies accepted the proposal made by the accused, Ramiah insisted that he should be continued as Supervising Kangany.

On October 20, 1945, the accused decided not to give work to Ramiah unless he agreed to work as a labourer and Ramiah ceased to work from that day. However, the accused tried again to persuade Ramiah to work on the estate as a labourer and as Ramiah persisted in his attitude that he would not work except as a Supervising Kangany, the accused dismissed him on November 20, 1945, and forwarded his discharge certificate and rice token card to the Deputy Controller of Labour. The Deputy Controller of Labour returned those documents to the accused on December 21, 1945, as the question of Ramiah's dismissal was under consideration in certain proceedings before the Deputy Controller. Ramiah continued to remain on the estate and live with his wife who was a labourer on the estate.

The question that has to be decided is whether in these circumstances Ramiah was a person resident on the estate, to whom the accused was bound under Regulation 4 (1) to supply rice on the dates mentioned in the charge. That Regulation enacts :—

"The Superintendent of every estate shall be the distributor of such supplies to all persons resident on that estate and shall sell or issue such supplies to such persons in accordance with the provisions of this Part."

Ramiah was living on the estate in December, 1945. The right of a husband to live in the coolie line with his wife who is a labourer on the estate is recognised by section 23A of the Estate Labour (Indian) Ordinance which reads :—

"Where, on any estate, housing accommodation is provided by the employer for any labourer who is living with his or her spouse on that estate, the employer shall provide a separate room for such labourer and his or her spouse and shall not compel them to share such room with any person other than a child of such labourer or of his or her spouse."

Moreover, no action has even been filed in Court by the accused to eject Ramiah from the estate. Regulation 4 (1) does not require that the person "resident" on the estate should be a labourer on the estate. I may refer in this connection to the definition of "Estate" given in Regulation 4 in Part III. (Head F)—

"'Estate' means any land of which ten or more acres are actually cultivated and on which not less than forty persons are usually resident whether or not such persons are actually employed on the land in any capacity . . . ."

I hold therefore that Ramiah was a person whom the accused was bound to supply with rice in December, 1945.

In imposing a fine of Rs. 150 the learned Magistrate remarked that "there was no *bona fides* in the action of the accused" as he failed to follow the advice given to him by the Deputy Commissioner of Labour with regard to the supply of rice to Ramiah. On a careful consideration of all the aspects of the case I find it difficult to infer a lack of *bona fides* on the part of the accused from the mere fact that he did not agree with the Deputy Controller of Labour on that point. The accused appears to have thought that there was no such legal obligation to supply rice and foodstuffs to Ramiah after the dismissal, as he did not think a Superintendent of an estate would be saddled with the burden of distributing food supplies to persons whom he regarded as lawfully dismissed from the estate.

I do not think that this is a case which calls for more than a nominal fine.

I uphold the conviction but reduce the fine to Rs. 20.

*Conviction upheld.*

*Sentence reduced.*

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