PRICE CONTROL OFFICER v MORRIS HEDSTROM LIMITED

Supreme Court Apia
14 September 1972
Rothwell CJ

STATUTORY OFFENCES (Sale of goods in breach of Price Order and failure to display list of prices fixed by Price Control Board) - Price Control Act 1971 s 9(1) - STATUTES (Interpretation) - Drafting error rendering enactment meaningless or creating ambiguity to be resolved by application of ejusdem generis rule - Both offences charged under Act dependent on existence of Price Order - s 6(6) of Act requiring that an order be published in a newspaper in both English and Samoan or "given in such other manner as the Board shall consider sufficient" - Absence of any evidence of newspaper publication and lack of proof that radio announcement complied with requirements - Literal construction of second part of s 6(6) that Board might "give" a price order in some manner other than newspaper publication meaningless and not subject to interpretation by the Court - Assuming it to mean "publication" could be done by some other means the application of the ejusdem generis rule required it to be done in both languages as stipulated for newspaper publication - Both views supporting the decision of the Magistrate that the charges should be dismissed for failure to prove publication of the relevant Price Order.

APPEAL from dismissal of charges under the Price Control Act 1971 by way of case stated on a question of law for determination by the Supreme Court.

Hay, Attorney-General, for appellant.
Clarke for respondent.

ROTHWELL CJ. This was an appeal by way of case stated against the dismissal by the Magistrates' Court of two Informations under the Price Control Act 1971 charging the respondent Company that it did on the 29th day of April, 1972 at its premises at Beach Road, Apia,

(1) sell goods, namely, white sugar at a retail price in breach of a relevant price order issued on the 10th day of March, 1972 and being an offence against section 9(1) of the Price Control Act 1971; and
(2) fail to keep displayed in a prominent position on its said premises a list showing clearly for the information of the public the price fixed by the Price Control Board in respect of goods offered for sale in those premises, and being an offence against section 6(7) of the Price Control Act 1971.

The informant in the Court below now appeals and asks this Court to determine the correctness, or otherwise, in law of the following conclusions said to have been reached by the learned Magistrate in the Court below:-

(1) The rejection of certain evidence of the witness Vincent Francis Brebner relating to a visit by him to the defendant Company's shop premises on 1st May, 1972.
(2) The rejection of a document produced by Mr Brebner (Exhibit

"B") as evidence of the making of a certain Price Order 1972/2.

(3) The conclusion that advertising of Price Order 1972/2 had not been proved.

(4) The conclusion that an advertisement over 2AP is not a proper compliance with the provisions of the Price Control Act 1971.

(5) The conclusion that Price Order 1972/2 was not correctly published.

(6) The conclusion that Price Order 1972/2 had not come into force.

(7) The decision to dismiss both informations.

The existence of a valid price order is obviously basic to both charges, and it is necessary now to examine the relevant part of the Price Control Act 1971, which is section 6(6) reading as follows:-

> (6) Every price order shall be published in the Samoan and English languages in one or more newspapers or given in such other manner as the Board shall consider sufficient, and no price order shall come into force before it has been so published.

This examination may well dispose of the questions posed in paragraphs 3, 4, 5, 6 and 7 in the case stated, and I propose to proceed with it in order to find if this is so. I digress here to point out that the words "advertising" in clause 3 and "advertisement" in clause 4 have been picked out of the Judgment appealed from, having been adopted by the learned Magistrate from Mr Brebner's evidence. Neither of these words appears in the relevant section 6 of the Act.

Section 6(6) is in three parts, the first part being,

> Every price order shall be published in the Samoan and English languages in one or more newspapers; the second being, or given in such other manner as the Board shall consider sufficient; and the third being, and no price order shall come into force before it has been so published.

It is common ground between the parties that the first part was not complied with by newspaper publication, and accordingly, unless there has been compliance with the second part, the third part comes into operation and prevents the order from coming into force.

The first and third part of the subsection are grammatical, clear and intelligible, but the second part appears to me to be not so. It is the "order" that is to be published, not a notice of the making of the order, so that the subject of the clause constituting the second part of the subsection is the "order" and the clause reads "or (every price order shall be) given in such other manner as the Board shall consider sufficient." What does this mean? How do you "give" a price order? This appears to me to be clearly a drafting error and it renders the portion of the section under consideration meaningless. In the case of an ambiguity the Courts have power to settle which of two possible meanings is to prevail. But there is no power to confer a meaning on legislation which has none. Halsbury's Laws of England, 3rd Ed., Vol. 36, at p. 392 states:-

> 586. Speculation as to Parliament's intention not permissible. If the result of the interpretation of a statute according to its primary meaning is not what the legislature intended, it is for the legislature to amend the statute construed rather than for the courts to attempt the necessary amendment by investing plain language with some other than its natural meaning to produce a result which it is thought the legislature must have intended.

And at p. 393:-

> 589. Exact meaning. Words in a statute must be taken to be used correctly and exactly, and the onus on those who assert that they are used loosely or inexactly is a heavy one.

To give an intelligible meaning to the clause quoted requires more than speculation. It would require a struggle. If I am right in this conclusion, the section is left with only parts one and three. There has been no compliance, and there was, in fact, no price order in existence on April 29th, 1972. The answers in respect of clauses 3, 4, 5, 6 and 7 would be that the decisions were correct.

But, to take the investigation a step further, let us assume for the purpose that the second clause in section 6(6) means that publication should be made "in such other manner as the Board should consider sufficient." Then, in my view, the ejusdem generis rule demands that "such other manner" should comply with the requirement for bilingual publication, which appears in the earlier part of the subsection. Whatever is published is for the whole public, and the necessity for two languages to be used is recognised in the requirement relating to the main avenue of publication, namely, newspaper publication.

There is in fact on the record not one word of evidence testifying to the time, content or bilingual character of whatever was broadcast. This is fatal to the prosecution. This is a penal statute in so far as section 6(6) is concerned. It must be strictly construed: see Halsbury's Laws of England, 3rd Ed., Vol. 36, at p. 415:-

> 631. Construction. It is a general rule that penal enactments are to be construed strictly, and not extended beyond their clear meaning. At the present day, this general rule means no more than that if, after the ordinary rules of construction have first been applied, as they must be, there remains any doubt or ambiguity, the person against whom the penalty is sought to be enforced is entitled to the benefit of the doubt.

If this narrower view of the situation is correct the conclusion in clause 3 would be upheld; clause 4 would be disagreed with (subject to bilingual treatment of any matter published); the matters in clauses 5 and 6 would be held to have not been proved; but the Informations would both have been dismissed for want of proof.

In my view, the broader finding of invalidity of part of section 6(6) for impossibility of interpretation is the correct one, and the conclusions in clauses 3, 4, 5, 6 and 7 are upheld, and the appeal is dismissed. In these circumstances, any comment on questions 1 and 2 would be obiter.

Costs reserved. Leave to apply.