

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an appeal under and in terms of Article 154 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

Public Health Inspector,
Mannar.

Complainant

Vs.

Court of Appeal Application
No: CA/ **PHC/194/14**

High Court of Mannar
No: **REV/24/12**

Magistrate's Court of
Mannar
No :**25646**

1. Kanapathipillai Arumugasamy
2. Eliyas Anthonipillai
3. Arumugasamy Kishotharan

Accused

And between

1. Kanapathipillai Arumugasamy
2. Eliyas Anthonipillai
3. Arumugasamy Kishotharan

Accused-Petitioner

Vs.

1. Public Health Inspector,
Mannar.

Complainant-Respondent

2. Hon. Attorney General
Attorney General's Department,
Colombo 12

Respondent

And now between

1. Kanapathipillai Arumugasamy
2. Eliyas Anthonipillai
3. Arumugasamy Kishotharan

Accused-Petitioner-Appellants

Vs.

1. Public Health Inspector,
Mannar.

**Complainant-Respondent-
Respondent**

2. Hon. Attorney General
Attorney General's Department,
Colombo 12

Respondent-Respondent

BEFORE

: Menaka Wijesundera J
Neil Iddawala J

COUNSEL

: Dushit Johnthasan with P. M. Niruja
Fernando for the Petitioner Appellants

Chathurangi Mahawaduge SC for the
Respondent.

Argued on : 04.04.2022
Decided on : 02.06.2022
Written Submissions on : 05.11.2019 (Appellants)
09.06.2020 (Respondent)

Iddawala – J

This appeal has been filed by the Regional Manager, Production Manager and Assistant Production Manager (*hereinafter the appellants*) of Manthai Salt Ltd (Incorporation No. M. N. (P.P.S) 947) who have been named as accused in Case No 25646 of the Magistrate Court of Mannar for committing offences punishable under the Food Act No. 26 of 1980 as amended by Act No. 20 of 1991 and Act No. 29 of 2011 (*hereinafter the Act*). The first appellant has passed away, and the remaining appellants maintain this appeal. The genesis of this case dated to 13.11.2009 when the sole proprietor of Aarokya Industries and Marketing Services of Mannar lodged a complaint with the Public Health Inspector (*hereinafter the respondent*) regarding the purchase of 1,500kg of salt from Manthai Salt Ltd and the inferior qualities of the said salt. The government analyst report dated 20.05.2010 confirmed that the samples sent for analysis do not conform to the Food (Iodization Salt) Regulations 2005 made by gazette extraordinary No. 1405/3 dated 11.08.2005 and therefore are not suitable for human consumption.

The instant appeal seeks to set aside an order of the Magistrate dated 02.10.2012 and order of the High Court dated 17.12.2014 (which affirmed the former) whereby a preliminary objection raised by the appellants was dismissed. The said objection pertained to the maintainability of the case where it was argued that since the alleged offence was committed by a body corporate, the body corporate and its directors ought to be named as

accused as per Section 27 of the Act. Thus, the instant appeal pivots on the issue of whether the appellants fall within the ambit of Section 27 of the Act.

Prior to dealing with the question of law, this Court will set out the factual background. The appellants were arrested by the respondent on 22.05.2010 and produced before the Magistrate Court of Mannar, based on a Report filed under Section 136(1)b of the Code of Criminal Procedure Act No. 15 of 1979 (*hereinafter the CPC*). It was alleged that the appellants have committed an offence under the Act as employees of Manthai Salt Ltd. Hence appellants have been accused of committing an offence punishable under Section 18(1)(a) of the Act for contravening Section 2(1)(a), (b) of the Act read with Regulation No. 4, 5(a), (b), (c), (d) of the Food (Iodization Salt) Regulations 2005 made by gazette extraordinary No. 1405/3 dated 11.08.2005. The appellants were produced before the Magistrate Court of Mannar under Case No. B 469/09. They were remanded till 07.06.2010 and were enlarged on surety bail of Rs. 100,000/- subsequently. On 15.06.2010, counsel for the appellants raised an objection in terms of Section 27 of the Act contending that the alleged offence has been committed by a body corporate within the meaning of the Act and that action should be instituted against Manthai Salt Ltd, which is a duly incorporated company under the Companies Act. In this regard, the Magistrate sought the opinion of the Attorney General. By letter dated 24.06.2011, the Attorney General advised the Magistrate to proceed against the appellants under Section 18 of the Act. After considering such an opinion, the Magistrate rejected the objection raised by the counsel for the appellants and ordered them to proceed with trial by order dated 02.10.2012. Being aggrieved by the said order, the appellants filed a revision application, which was dismissed by the learned High Court judge of Mannar by order dated 17.12.2014. Being aggrieved by the said order of the High Court and the order of the Magistrate, the appellants have preferred the instant Appeal to the Court of Appeal seeking to set aside the

order of the Magistrate dated 02.10.2012 and order of the High Court dated 17.12.2014.

The appellants are alleged to have committed an offence as per Section 18(1)(a) of the Act.

Section 18 (1) Every person who contravenes any of the provisions of this Act or any regulations made thereunder or fails to comply with any direction given under this Act shall be guilty of an offence and shall be liable on conviction-

(a) where the nature of the offence involves injury to the health of the public, to imprisonment for a term not less than six months and not exceeding three years, and also to a fine not less than five thousand rupees and not exceeding ten thousand rupees;”

The phrase ‘every person’ means either a natural person or a legal person. Section 27 elaborates on the constitution of the said ‘person’ by refereeing to a ‘body of persons’ and a ‘body corporate’:

Section 27 Where an offence under this Act or any regulations made thereunder is committed by a body of persons then:

(a) if that body of persons is a body corporate, every person who at the time of commission of the offence was a director, general manager, secretary or other similar officer of that body; or

(b) if that body is not a body corporate every person who at the time of commission of the offence was a member of that body,

shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or concurrence, and he exercised all such diligence to prevent the

commission of that offence as he ought to have exercised in the circumstances having regard to the nature of his functions.

(Emphasis added)

Neither party dispute the fact that Manthai Ltd is a body corporate. The only dispute is whether the appellants, namely the Regional Manager, Production Manager and Assistant Production Manager of Manthai Salt Ltd, can be held liable for committing an offence as per Section 18(1)(a) of the Act.

The counsel for the appellants submitted that none of the directors of Manthai Ltd had been named as the accused in the Magistrate Court Case filed by the respondent. The three officers who were charged were merely asked to appear for an inquiry where they were produced before Court on a Saturday, remanded, and later released on bail. The counsel's contention for the appellants is that the appellants cannot be considered within the category of "director, general manager, secretary or other similar officer" as envisaged in Section 27 of the Act. The counsel for the appellant submitted that the very same objection as raised before the Magistrate Court which was overruled on 02.10.2012. The counsel referred to the said order (Vide Page 51 of the English Translation of the Brief) and submitted that the rationale for such overruling by the Magistrate was the advice tendered by the Attorney General, which the Magistrate himself sought. Next, the counsel for the appellants referred to Section 60(7) of the Consumer Affairs Authority Act, No.09 of 2003, which stipulates 'every director and every officer of that body' is deemed guilty of the offence committed under the Consumer Affairs Authority Act. The counsel for the appellant contrasted Section 69 (7) of the Consumer Affairs Authority Act with Section 27 of the Act to state that in the former, the legislature has intended to hold a wider group of people liable, whereas, in the latter, the legislature has specifically limited the liability to a group of persons within the body corporate, i.e., director, general manager, secretary or other

similar officer. Reference was made to a judgment delivered by the Court of Appeal under the Consumer Affairs Authority Act (**Susantha Chaminda Ratnayake v Consumer Affairs Authority** CA/PHC/APN/ 149/2017 CA Minute dated 18.09.2020 at page 13), which upheld the imperativeness of naming both the body corporate and its directors when an offence has been alleged. It was further submitted that employees of the body corporate Manthai Salt Ltd, who do not fall within the category of people envisioned under Section 27 of the Act cannot be made individually liable in a context where neither the body corporate nor its directors have been named as accused. It was the counsel's contention that in the absence of the body corporate and the directors or similar person been named as accused, the naming of three ordinary employees is contrary to law.

The submissions of the State Counsel for the respondent stressed that the case filed in the Magistrate Court is not a case file against a body corporate but against three individuals who are the appellants. The State Counsel referred to Section 18 of the Act to support this submission and stated that the said section refers to 'every person who contravenes any provisions of the act' contending that by virtue of Section 18(1) of the Act even an individual or group of individuals (as in this case) could be found liable for offences under the Act. In the written submissions, the respondent contends that the evidence of the case relates that the appellants have individually and personally committed the crime despite the fact that they were employed by Manthai Salt Ltd. The submissions further state that this crime was committed by the appellants in furtherance of their personal/ individual objective and not in furtherance of the interests of the company's business. It is the respondent's contention that Section 27 of the Act does not come into play and that the facts of the case do not amount to corporate criminality (Vide Page 7 of written submissions of the respondent).

Having briefly set out the submissions of both parties, this Court will firstly deal with the contention of the respondent that the instant matter is not one concerning corporate criminal liability. For this purpose, the Charge Sheet in the Magistrate case found on Page 37 of the Brief will be referred to. The said Charge Sheet begins as follows:

01. Kanapathippillai Arumukaswamy (Regional Manager)

02. Eliyas Anthonippillai (Production Manager)

03. Arumukasamy Kisotharan (Assistant Production Manager)

The charges have been framed against the appellants as follows,

At Manthai Salt Limited of Mannar located in salt-flat Road, Periyakadai Mannar within the jurisdiction of this Court.....

.....

On page 44 of the Brief the Journal entries dated 02.06.2010 includes the submission made by the Public Health Inspector, where he states the following “*we have produced these three suspects before the Court since these three suspects working at the Manathai Salt Corporation Limited are the ones who directly got involved in producing salt and selling out the same which is harmful to the human consumption and since these three are the only responsible officers*” (Vide Page 44 of the Brief). After such submission, the Magistrate orders to detain the suspects in remand until 07.06.2010. It is patently clear that the charges have been framed against the appellants in their official capacity as employees of Manthai Salt Ltd. Therefore, this Court rejects the respondent's contention that the accused have been charged in their personal capacity for committing an offence under the Act. The appellants have been charged in their official capacity as employees of Manthai Salt Ltd, which is a body corporate with perpetual succession and a common seal having a legal persona which could sue or be sued.

This Court would like to pause at this juncture and refer to the words of His Lordship Justice Saleem Marsoof in **Central Bank of Sri Lanka and Others v Lankem Tea and Rubber Plantations (PVT) Ltd** 2009 2 SLR 75. The case concerned alleged contravention of Section 10(1) read with Section 51(1) of the Exchange Control Act No 24 of 1953, whereby a penalty was imposed on Lankem Tea and Rubber Plantations (Pvt) Ltd by the Controller of Exchange. Though the facts and the applicable law are different to the instant matter, Central Bank v Lankem Pvt Ltd (supra) refers to the nature of liability imposed upon a body corporate which has a separate legal personality from its employees: “It is trite law that the legal personality of a corporate body such as Lankem Tea and Rubber Plantations (Pvt) Ltd., is distinct from that of its members and directors, and even if it be the case that none of the current members of that Company was Directors or even shareholders of Lankem Tea and Rubber Plantations (Pvt) Ltd, at the time of the commission of the alleged offence, that will not affect its liability under Section 51(1) of the Exchange Control Act.”

Having determined that the appellants have been charged in their professional capacity as employees of the body corporate Manthai Salt Ltd, this Court will now evaluate whether the appellants fall within the ambit of Section 27(a) of the Act. Section 27 (a) stipulates “*Where an offence under this Act or any regulations made thereunder is committed by a body of persons then: (a) if that body of persons is a body corporate, every person who at the time of commission of the offence was a director, general manager, secretary or other similar officer of that body; or*”. The wording of the Section indicates a class or a genus of people whereby the legislature has limited the liability of an offence under the Act to a director, general manager, secretary or other ‘similar’ officer. As none of the appellants is a director, general manager or a secretary, the question to be dealt with is whether they fall within the ambit of ‘similar officer’. To that end, it is the considered view of this Court that the words ‘similar officer’ should be

read *ejusdem generis* to mean similar in nature to the class of persons who exert authority, make binding decisions and exert control over the business of the body corporate as a director, general manager or secretary.

The doctrine of *ejusdem generis* is applied when some specified words are followed by the general words. As such, the words ‘director’, ‘general manager’ and ‘secretary’ are specific words, and the words ‘similar officer’ is general. As there is ambiguity as to whether the appellants, namely the Regional Manager, Production Manager and Assistant Production Manager of Manthai Salt Ltd, would fall within the meaning of ‘similar officer’, this Court will utilize the doctrine of *ejusdem generis* to achieve the purpose or objective of the Act. This doctrine provides that the general words which follow the specified words will be restricted to the same class of the specified words. As held in **Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover**, (1957) AC 436 at 461 of the report, “...when general words are juxtaposed with specific words, general words cannot be read in isolation. Their color and their contents are to be derived from their context.” (Also see- **Evans v. Cross** -(1938) 1 KB 694)

Hence, it is incumbent on this Court to ascertain whether the Regional Manager, Production Manager and Assistant Production Manager could be placed within the similar class as a ‘director’, ‘general manager’ and ‘secretary’.

When the legislature stipulated specific words of ‘director, general manager, secretary’, it is clear that their intention was to restrict the imposition of liability to those within the body corporate who has the authority and control to make high-level decisions regarding the business carried out and who amply represent the entire body corporate. This excludes ordinary employees of the body corporate. Had the legislature intended all employees of the body corporate to be held liable in the event an offence has been committed under the Act, the legislature would have

resorted to a language such as 'all officers' as opposed to specifying the director, general manager, or the secretary followed by the words 'similar officers'. The reason for the legislature to utilize a general term such as 'similar officers' is an indication that the class of persons intended by the legislature cannot be exhaustively enumerated, i.e., there may be instances where officers who carry the same obligations and duties of a director, general manager or secretary are identified by some other name such as Chief Executive Officer, Chief Operating Officer & etc. Therefore, it is evident that the legislature intended the generality of the section to be restricted by the use of specific enumerations.

The words director and general manager signify persons who have authority and general oversight over the entire business of a company or a corporation. In a structural hierarchy of a company, these persons would constitute the topmost level of decision-makers exerting control over the entirety of the company. When considering the Companies Act No 7 of 2007, the scheme of the law gives special recognition to the persons holding the office of 'director' and 'secretary'. As the law stands today, directors are entrusted with statutorily recognised duties (Section 187 – 189) while carrying liabilities even to the extent of personal criminal liability if they act negligently or in breach of their duties. (Section 220(4)). A secretary has authority and oversight in respect of records of the entire company and is endowed with statutory responsibilities. Therefore, it is evident that the class of persons under which a director, general manager or secretary has duties and responsibilities to the entirety of the company where they exert authority on behalf of the company. It is illogical to categorize a Regional Manager, a Production Manager and an Assistant Production Manager in the same class as there is no evidence of the effect of their authority or oversight over the entirety of Manthai Salt Ltd. This is, even so, when none of the directors of the Manthai Salt Ltd has been named as accused in the Magistrate Court when the Act clearly refers to

them as being liable in the event the body corporate is accused of committing an offence.

Based on the above reasoning, this Court agrees with the contention of the appellants that the appellants do not fall within the ambit of Section 27 of the Act. Hence, this Court upholds the preliminary objection raised by the appellants in Magistrate Court Case No 25646 and sets aside the order of the Magistrate dated 02.10.2012, and the order of the High Court dated 17.12.2014.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL