

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

In the matter of an Appeal under Section 20(7) of the Consumer Affairs Authority Act No. 09 of 2003 (as amended).

CA (Mis) Application No.01/2022

All Island Egg Producers Association
Galpokunawatta, Aralugaswea,
Kobeigane.

APPELLANT

VS

1. Consumer Affairs Authority
1st and 2nd Floor,
C.W.E. Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.
2. Shantha Niriella,
Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.
3. Director General,
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.

RESPONDENTS

Before: **Prasanth De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Kuvera de Zoysa, P.C with Shantha Jayawardena A.A.L and Jayamuditha Jayasooriya A.A.L and Pasindu Bandara AAL for the Appellant.
Sumathi Dharmawardena, Additional Solicitor General, P.C with Shiloma David State Counsel for the Respondent.

Delivered on: 18.05.2023

Prasanth De Silva J.

Order

All Island Egg Producers Association being the Appellant filed an application bearing No. MIS 0001/2022 in the Court of Appeal, seeking to set aside the order made by the Consumer Affairs Authority under section 20 (5) of the Consumer Affairs Authority Act No 07 of 2007, published in Gazette bearing No. 2293/69 dated 19.08.2022, which sets the Maximum Retail Price (MRP) of a white egg and a Brown egg at a price of Rs. 43/- and Rs. 45/- respectively.

The Appellant has submitted that due to the economic crisis with the depreciation of the Sri Lankan Rupee against the U.S Dollar resulted in an increase in the cost of food, vaccines, and parent stocks used in egg manufacturing. Furthermore, the fertilizer bans which resulted in the rise of fertilizer prices decreased production of corn and paddy. Moreover, with the increase of transport costs due to the rise of fuel prices in unprecedented proportions, the cost of production of an egg increased by a considerable proportion, and by June 2022 the cost of production of an egg was approximately Rs. 46/-.

The instant application was supported on 07.10.2022, and the parties agreed to have a discussion on or before 14.10.2022 with the officials of the Appellant and the government stakeholders including the affidavits of the Department of Animal Production and Health Ministry and Ministry of Agriculture regarding the maximum Retail Price stated in the said Gazette notification marked P4.

According to the journal entry dated 07.10.2022, the learned Additional Solicitor General had undertaken to advise the Respondents to take into consideration all the contributory factors with regard to the production and distribution of eggs.

The said application was mentioned in Court on 25.10.2022 and 08.11.2022. On 08.11.2022 the parties had moved for another date to explore the possibility of a settlement.

According to the journal entry dated 15.11.2022, court was informed by the Attorney who appeared in Court on behalf of the Consumer Affairs Authority that no meeting was held after 12.10.2022 regarding this matter.

On the contrary, counsel who appeared for the Appellant had informed the court that a meeting was held, and a decision was taken to set the price an egg at Rs. 55/- within the course of the last two weeks (during the two weeks leading up to 15 November court date).

Thereafter, the Attorney appearing on behalf of the Attorney Generals' Department had made a request to mention this matter to submit a report in this regard. Consequently, the court granted a date to mention this matter on 17.11.2022.

It appears that on 17.11.2022, no report was submitted by the Consumer Affairs Authority. Instead, parties moved to another date to explore the possibility of a settlement. Although this matter was mentioned on 24.11.2022, Court was informed that discussions were ongoing to reach a settlement and the matter was moved to another date.

On 30.11.2022, since there was no settlement between the parties, the matter was fixed for argument on 14.12.2022.

However, on 14.12.2022, ASG Sumathi Dharmawardena P.C. appeared on behalf of the Attorney General and informed court that Mrs. Chaturi Gallage, legal officer of the Consumer Affairs Authority is present in court and submitted a letter dated 13.12.2022 signed by the Chairman, Consumer Affairs Authority which states that a discussion was held on 06.12.2022 with the participation of the officials from the Department of Animal Production and Health, Ministry of Agriculture, All Island Egg Producers Association, All Island Poultry Traders Association, All Island Egg Traders Association-Kobeygane and Kandana, Royal Poultry Science Association Sri Lanka branch, Niluka farm, Nel Farm, Swiss Lanka, including the small and medium Egg Manufacturers Association.

The learned President's Counsel who appeared for the Consumer Affairs Authority, had submitted that as per minutes of the meeting, each participant had submitted dates with regard to varying prices of White and Brown eggs.

In addition to that on 12.12.2022, the Consumer Affairs Authority and the chairman of the All Island Egg Producers Association had a discussion and it was brought to the notice by the Consumer Affairs Authority and by the Chairman All Island Egg Producers Association as of now the price of a Brown egg is Rs. 50 and a white egg is Rs. 49. At the above meeting

Consumer Affairs Authority was requested to increase the maximum retail price to Rs. 55/- and remove the existing maximum retail price.

As a result of this consultative process, it was informed by the ASG Sumathi Dharmawardene P.C., that Consumer Affairs Council will meet on 14th December at 2:30 PM to revisit the maximum retail price along with the information submitted by the relevant stakeholders.

As such, the learned President's Council who appeared on behalf of the Consumer Affairs Authority, moved for a further date to submit the final discussion of the Consumer Affairs Authority pertaining to Gazette notification marked as P4.

Although the matter was fixed for argument top of the list for 14.12.2022, after hearing the President's Counsel, Court made an order in terms of Prayer 'g' in the Petition of the Appellant directing the 1st Respondent-Consumer Affairs Authority to fix a maximum Retail Price for a white egg with a brown egg for the time being considering the consumers demand for eggs during the festive season.

Since the said Gazette notification marked P4 is not applicable for eggs sold at supermarkets at the rate of Rs.65/- per egg and a carton of Rs.650/-, the court directed the Consumer Affairs Authority to decide a fair and reasonable maximum retail price for the time being and inform the court on 15.12.2022.

On 15.12.2022, it was informed to the court that the Consumer Affairs Authority and the Consumer Affairs Council had decided the maximum retail price of a white egg at Rs. 42/- and a red egg for Rs.44/-.

However, the Court was not inclined to decide the maximum retail price at that stage. Nevertheless, Court had stayed the operation of the Gazette notification marked P4 until the final determination of this application and further directed that the price of an egg should not be set at a lower price than what is included in the said Gazette notification until the final adjudication of this matter.

Since there was no settlement was reached between the parties, the court fixed the matter for argument for 06.02.2023.

When this matter was called on 06.02.2023 for argument, the Appellant moved to withdraw the application in view of the fact that the Consumer Affairs Authority had taken steps to publish a new Gazette bearing No. 2315/57 dated 20.01.2023 fixing a maximum retail price for white eggs at Rs. 44/- and Brown eggs for Rs. 46/-.

It is observable that the said Gazette notification was published while the matter was pending in this Court, before the date fixed for argument.

As the Gazette notification published on 20.01.2023 created a new cause of action, even if a decision is given on the instant application, it will merely become an academic exercise. Therefore, this court allowed the Appellant to withdraw the instant application.

At this juncture, the learned President's Counsel appeared on behalf of the Consumer Affairs Authority and moved Court to award cost of litigation.

The Respondents notwithstanding the stay order issued by this Court and also notwithstanding the fact that the appeal was due for argument on 06.02.2023 and had published the said Gazette notification No. 2715/57 without obtaining prior permission from the Court, which has rendered this application ineffective.

It is apparent that the Respondents had not assisted court to speedily dispose the matter. Instead taken a number of dates indicating to explore a possibility of a settlement. Even on the date of hearing, Respondents had refrained from arguing the matter after court fixed the matter for 14.12.2022 top of the list.

Considering the above, the Appellant had moved to withdraw this application subject to filing a fresh action, if necessary - which seems reasonable.

In view of the aforesaid circumstances, Court feels that the Appellant should be allowed to withdraw the instant application subject to tax cost.

Hence, subject to the withdrawal of the application, this application is dismissed with tax costs.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL