

**APPEAL TRIBUNAL OF THE FAIR TRADING COMMISSION OF SEYCHELLES**

Rethinasamy Arunachalam and Rethinasamy Karpakasiundari  
(trading as New Shop)

**APPELLANT**

Versus

FAIR TRADING COMMISSION

**RESPONDENT**

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**JUDGMENT**

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The Appellants case consisted of 5 points of appeal including an extension of time. We allowed the appeal on certain grounds, and quashing one of the penalties imposed by the board therefore reducing the total penalty owed. We further granted an extension of 3 months for all payment to be made. We now give our reasons.

1. A case was filed in 2018 by the Respondent against the Appellant for breaches of the Consumer Protection Act 2010 (henceforth CPA) following routine inspections of commercial establishments carried out by the Fair Trading Commission Authorities
2. In a ruling delivered on 27<sup>th</sup> May 2019 the Board of Commissioners found the Appellant in contravention of the CPA (under the Appellants Admission) and in accordance with Section 67(1) imposed a total fine of SCR 29,500.00 to be paid within 60 calendar days of the receipt of the ruling. The charges and respective fines are as follows:
  - a) Section 19(1)b for sale of items with labels not in plain language was fined SCR 500/-
  - b) Section 20(1) offered for sale items without their price being displayed and was fined SCR 20,000/-
  - c) Section 24 displaying for sale of items past their expiry date and fined SCR 3,000/-
  - d) Section 25 issuing receipts lacking compliance of CPA requirements of a sale record and fined SCR 3,000/-
  - e) Section 50(1)a offering goods which did not meet the necessary safety standards and fined SCR 3,000/-
3. The Appellant appealed both the fines, and the time limit imposed for full payment of the fines.
4. During the hearing, the following was raised:
  - a) In Respect of Labels not being in Plain Language (Section 19(1)b):  
It was argued as to whether having neither of the 3 languages (English, French, Creole) on items that are commonly known and used and/or consumed would truly be detrimental to consumers as the method of utility would not change. It was further argued as to the lack of knowledge of the nutritional value would affect the consumer who would be unable to read such details even when transcribed to a known language. The Respondent refuted this argument on the basis of regardless of the consumers likely use or understanding of the information inscribed on the item, it should nonetheless be provided in a language understandable should they so wish to be able to read it.

The fine of SCR 500/ was maintained.

b) In respect of prices not being displayed (Section 20(1)):

Whilst it was not argued that the prices need not have been displayed, the sum imposed for this breach was argued to be excessive. The Respondent argued that such sum was justified due to the likely profit that could be gained from charging customers different prices rather than a fixed sum. Arguments were raised in line of the fact that no such profit had been proven, there was no evidence of persons being charged exorbitant or different prices for the same goods. No evidence had been put forth to justify the claim of the Appellant being able to or profiting that excessively. In written submission the Respondent argues that nonetheless, such failure to price the goods properly or at all was a deliberate act or omission.

The number of items that were unpriced was 688 items, of 37 separate products, and the fine must be proportioned accordingly. The fine of SCR 20,000/- is therefore maintained

c) In respect of goods being past expiry date (Section 24):

The fine of SCR 3,000/- is maintained.

d) In respect of receipt not adhering to the standard requirements of the CPA (Section 25):

No arguments were raised in respect of the Receipt, although it must be noted that the issues were noted to be rectified by the Appellant with proof provided of their new Receipts being issued. The fine of SCR 3,000/- is maintained.

e) Interaction between Section 24 and Section 50:

The 2 Sections are not mutually exclusive. Section 24 covers the sale of expired goods and Section 50 covers the sale of goods not meeting the safety standard. The sale of an expired food item breaches Section 24 and would also fall foul of meeting safety standards as the food could not be safe for human consumption. In such a case the principle of multiplicity would apply, that is, if one count of a charge alleges the same elements as another count, then the Defendant can be found guilty of only one count and sentenced for one count only.

Although not raised in the appeal, the Appeal Board pro prio motu, raised the point, invited and received submissions on that. Based on the principle of multiplicity, we quashed the sentence and conviction under Section 50.

f) Extension time to pay

The Appellant requested for more time to pay the fine due to his precarious situation. We noted that he readily admitted guilt before the Commission, provided proof that all the breaches had been rectified, expired goods dispensed of and we believed in his good faith. We extend the time to pay to the beginning of January 2020. The total fine is reduced to SCR 26,500/-.

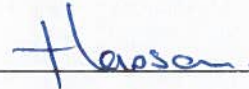
g) General Observations:

Lay persons appearing before the Fair Trading Commission (and are often unrepresented by a lawyer) cannot be expected to know a charge wrongly drafted, or faulty for multiplicity. It could not have been expected to be a ground raised by an unrepresented person. The Fair Trading Commission should heed this when drafting charges

Dated at Victoria, Mahe, Seychelles on this 18<sup>th</sup> day of March 2020



KIERAN B SHAH  
CHAIRMAN OF THE APPEAL TRIBUNAL



MR ASHIK HASSAN  
MEMBER OF THE APPEAL TRIBUNAL



MS DIANA QUATRE  
MEMBER OF THE APPEAL TRIBUNAL



DR GERARD ADONIS  
MEMBER OF THE APPEAL TRIBUNAL

**Appeal Tribunal**  
established under  
Section 44(1) of the  
Fair Trading Commission Act 2009