

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

Muthukumar Rengraju  
(trading as Prayaag Shoppers)

**APPELLANT**

Versus

FAIR TRADING COMMISSION

**RESPONDENT**

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**JUDGMENT**

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The Appellants case consisted of an appeal against the fine imposed on 5 charges and an appeal for an extension of time for payment of the fine. We allowed the appeal on one conviction and sentence. 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 36,000.00 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 1,000/-
  - 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 6,000/-
  - 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 6,000/-
3. The Appellant appealed both the sum, and the time limit imposed for full payment of the fine.
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.

Following precedent in similar instances, the fine was R 500/-. In order to maintain consistency in sentencing we reduced the fine to R 500/-.

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, capable for allowing for an unfair bargaining power.

Due to the fact that the number of items that were unpriced was 1,212 items of 109 types, the we find that this does amount to greater omissions on behalf of the Appellant. Due to the large quantity of items recorded to be in contravention of the section, the fine of SCR 20,000/- is reasonable and is maintained.

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

No arguments were raised in respect of the issue of the dangers of goods, particularly food items being sold past their expiry date. We therefore hold that a penalty was justifiable for the contravention of the CPA.

It must be noted that in respect of the disparity of fines in comparison to prior cases, the following was taken into account. In the case of New Shop, for contravention of section 24 by the sale of 51 items past the date of expiry, a fine of SCR 3,000/- was imposed. In the present case the number of items offered for sale past expiry totalled at 136, more than double the preceding case. Accordingly the severity of offence and likely impact on a consumer was greater, justifying the greater fine. The fine of SCR 6,000/- is maintained.


d) Breach of Section 50 on same facts as Section 19 and Section 20:

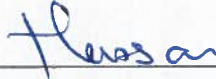
We believe that the FTC was in error to charge the Appellant for a breach of Section 50 that the goods on offer did not meet the general standard of safety. The allegations were based on goods not being labelled/ information in plain language (a breach of Section 19) and goods past their expiry date or best before date, or not having an expiry date (a breach of Section 20). Having been convicted and fined for these 2 breaches, the same facts cannot be used to support a conviction under Section 50, as this is a violation of the principles of multiplicity whereby 2 charges cannot allege and rely on the same offences. The Appellant having appeared in person at all stages of the proceedings, without the benefit of legal representation, could not have been expected to raise this point on appeal. The Appeal Tribunal pro prio motu took the point in the interest of justice and quashed the conviction and sentence in order to cure an injustice.

- e) In respect of the Receipt not adhering to the standard requirements of the CPA:  
No arguments were raised in respect of the Receipt. The fine of SCR 3,000/- is maintained.


We grant the Appellant a deduction of SCR 6,500/- as well as 3 months following delivery of our ruling to pay the remaining SCR 29,500/- fine maintained.

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

  
KIERAN B SHAH  
CHAIRMAN OF THE APPEAL TRIBUNAL

  
ASHIK HASSAN  
MEMBER OF THE APPEAL TRIBUNAL

  
DIANA QUATRE  
MEMBER OF THE APPEAL TRIBUNAL

  
GERARD ADONIS  
MEMBER OF THE APPEAL TRIBUNAL

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