

SHIU RAM

A

v.

REGINAM

[SUPREME COURT, 1964 (Knox-Mawer Ag. P.J.), 31st January,
21st February].

B

Appellate Jurisdiction.

Criminal law—traffic offences—load exceeding permitted width—regulation 26A of the Traffic (Construction and Use) Regulations 1955 neither ambiguous nor impossible of fulfilment—Traffic (Construction and Use) Regulations 1955, regs. 2, 5(1) (2), 26A—Traffic (Construction and Use) (Amendment) Regulations 1959, regs.3, 6.

C

Interpretation—regulation—whether ambiguous or impossible of performance—competence of court to consider reasonableness—Traffic (Construction and Use) Regulations 1955, reg.26A.

The requirement in regulation 26A of the Traffic (Construction and Use) Regulations, 1955, that lights be affixed to a vehicle "at the height of the floor", is not ambiguous, and the words quoted relate to lights affixed to the body of the vehicle and not to lights affixed to the cab.

D

Regulations 26A is not impossible of fulfilment and may be complied with by affixing temporarily to the cab or body of the vehicle a crosspiece with a lamp on each end.

E

Semble: Where power to make regulations of this kind has been committed to an executive authority, a court is not competent (in the absence of an allegation of bad faith) to investigate the reasonableness of the decision by the authority as to what is necessary or expedient: in any event regulation 26A is not unreasonable.

F

Case referred to: *Carltona Ltd. v. Commissioners of Works* [1943] 2 All E.R. 560.

Appeal by case stated from conviction by Magistrate's Court.

K. C. Ramrakha for the appellant.

G. N. Mishra for the Crown.

G

KNOX-MAWER Ag. P.J. [21st February, 1964]—

The appellant was convicted before the Magistrate's Court of the First Class Lautoka of an offence contrary to Regulations 26A of the Traffic (Construction and Use) Regulations 1955, in that he drove on the Queen's Road, Lautoka, on October 9th 1963, a heavy goods vehicle, the load of which exceeded 7 ft. 6 ins. in width and failed to exhibit two extra lights thereon. He has appealed by way of case stated.

H

The questions which this Court is requested to answer are as follows :

- A. Was this Court correct in deciding that Regulation 26A of the Traffic (Construction and Use) Regulations is not so ambiguous as to be invalid?
- B. Was this Court correct in deciding that Regulation 26A of the Traffic (Construction and Use) Regulations is not impossible to fulfil so as to be invalid?
- C. Was this Court correct in deciding that Regulation 26A of the Traffic (Construction and Use) Regulations is not so unreasonable that it must be deemed to be invalid?

The specific provisions of the law requiring consideration are these :—

- C. Regulation 2 of the Traffic (Construction and Use) Regulations 1955, in which "overall width" is defined as meaning :

"the width measured between parallel planes passing through the extreme projecting points of the vehicle exclusive of any driving mirror."

- D. Regulation 5 of the Traffic (Construction and Use) Regulations 1955, (as amended by Regulation 3 of the Traffic (Construction and Use) (Amendment) Regulations 1959, Legal Notice No. 12 of 1959) which provides as follows :—

"(1) The overall width of a motor vehicle shall not exceed seven six inches.

(2) The overall width of the load of a motor vehicle shall not exceed seven feet six inches; Provided that where a goods vehicle is transporting a load of only sugar cane the width of the load may exceed seven feet six inches, but shall not exceed ten feet."

- F. Regulation 26A of the Traffic (Construction and Use) Regulations, 1955 (inserted by Regulation 6 of the 1959 Amendment Regulations Legal Notice No. 12 of 1959) which provides :—

"26A. In addition to the lamps required to be carried on a goods vehicle under the provisions of these Regulations, if such vehicle is carrying on a road by night a load the width of which, pursuant to the proviso to regulation 5 (2) of these Regulations, exceeds seven feet six inches, there shall be carried and kept illuminated, whether the vehicle is moving or stationary :—

- G. (a) two lamps each showing a white light clearly visible from the front from a distance of 300 yards, positioned one on each side of the vehicle not nearer to the centre of the vehicle than the outside extremity of the load and affixed either to the cab or to the body of the vehicle and at the height of the floor;
- H.

- (b) two lamps each showing a red light clearly visible from the rear from a distance of 300 yards, positioned and affixed as aforesaid.”

As to the first question stated, it was argued by learned counsel in the Court below that the words in Regulation 26A (a) “and at the height of the floor” could refer either to the “cab” or to the “body”, and that this made the Regulation ambiguous. In my view, the learned Senior Magistrate held correctly that there was no ambiguity. These words clearly relate to the lights affixed to the body of the vehicle and not to lights affixed to the cab. Mr. Ramrakha for the appellant has conceded that this is so.

As to the second question stated, I agree with the decision of the lower court that Regulation 26A is not impossible to fulfil. When a load of sugar cane is being transported, the width of which exceeds seven feet six inches, in order to comply with Regulation 26A, a crosspiece, with a lamp on each end of sufficient length to ensure that neither lamp is nearer to the centre of the vehicle than the outside extremity of the load, must be temporarily affixed to the cab or to the body of the vehicle, at the height of the floor. This crosspiece must be removable. The reason for that is that under Regulation 2 (cited above) only the driving mirror may project beyond the normal permitted overall width of seven feet six inches. Hence any sort of *permanent* mounting for these “caneload lights” would offend the law, because they would then be a permanent projection when sugar cane was not being transported on the vehicle beyond the normal permitted overall width of seven feet six inches.

As to the third question stated, Mr. Ramrakha has stated that in so far as the legislature has delegated to the Governor-in-Council the power to make these Regulations the Courts cannot inquire into the reasonableness thereof. Mr. Ramrakha has cited, in support of this proposition, the case of *Carltona Ltd. v. Commissioners of Works* [1943] 2 All E.R. 560 at page 564, where the English Court of Appeal stated :

“It has been decided as clearly as anything can be decided that, where a regulation of this kind commits to an executive authority the decision of what is necessary or expedient and that authority makes the decision, it is not competent to the courts to investigate the grounds or the reasonableness of the decision in the absence of an allegation of bad faith All that the court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith. Apart from that, the courts have no power at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction.”

In any event, I do not consider that Regulation 26A is unreasonable.

The answers to questions (a) and (b) are therefore as follows :

- (a) Yes, the Court was correct in deciding that Regulation 26A of the Traffic (Construction and Use) Regulations (supra) is not so ambiguous as to be invalid.

- (b) Yes, the Court was correct in deciding that Regulation 26A of the Traffic (Construction and Use) Regulations (supra) is not impossible to fulfil so as to be invalid.

A

Appeal dismissed.