

SUVA CITY COUNCIL

v.

NITYA MUDALIAR

[HIGH COURT, 1989 (Fatiaki J) 28 June]

Appellate Jurisdiction

Traffic- parking meters- whether subject to Weights and Measures Act, 1979- effect of presumptions of regularity contained in the Traffic Act (Cap. 176) Section 79.

Evidence: criminal- the onus of proving that a parking meter is not of the approved type or is not in working order lies on a defendant- Traffic Act (Cap. 176) Section 79.

The Suva Magistrates' Court dismissed a summons alleging that the Respondent had failed to pay a parking meter excess charge on the ground that the Suva City Council had failed to prove that their parking meters complied with the requirements of the Weights and Measures Act 1979. Allowing an appeal by the Council the High Court HELD: (i) that parking meters are within the ambit of the Weights and Measures Act but (ii) were presumed by the Traffic Act, unless the contrary was shown, to be of an approved type and to be in working order.

Cases cited:

Jones v. National Coal Board [1957] 2 QB 55
SCC v. R.S. Vishwah (Crim. Case No. 6317/85)

H.M. Patel for the Appellant
 Respondent in Person
N. Nand as amicus curiae

Appeal against acquittal entered in the Magistrates' Court.

Fatiaki J:

This is an appeal by the Suva City Council (hereafter referred to as 'the city council') against a ruling of the learned trial Magistrate Mr. J.K.L. Maharaj dismissing a complaint of the city council laid against the respondent alleging a Failure to Pay Excess Charge demanded by notice, and relating to a parking meter installed and operated by the city council on Robertson Road, Suva.

The Respondent failed to appear at his trial in answer to the summons issued on the city council's complaint and the matter was listed for formal proof on 9.2.88.

On the 9th of February 1988 the record reveals that the learned trial magistrate addressed the city council's prosecuting officer in the following terms:

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A "I have to take judicial notice of the fact but these meters are coin-operated and need weight in there to operate. The issue is whether they comply with the provision of the Weights and Measures Act concerning units operated by the weight system.

I accordingly adjourned those cases for SCC to assist the Court by clarifying the position of those meters vis-a-vis the Weights and Measures Act.

B Case adjourned till 11.2.88 for hearing."

Why the learned trial magistrate thought compliance with the Weights and Measures Act was an "issue" before him is not altogether clear, nor has it been clarified in his judgment.

C It might be that the learned trial magistrate was aware of an earlier decision of the then Chief Magistrate in a similar parking meter prosecution in which that very issue was unsuccessfully raised, and it might be that the learned trial magistrate took the opportunity to vent his disagreement with that earlier decision.

D But with respect, courts exist primarily for the orderly resolution of real disputes and not as a convenient forum for the discussion of legal opinions however interesting or interested the tribunal might be.

Be that as it may, on the 11th of February the City Council appeared by its legal advisor who although he did not call any evidence in the matter nevertheless addressed the learned trial magistrate making particular reference to a judgment of the then Chief Magistrate in Criminal Case No. 6317/85 SCC v. R.S. Vishwah delivered on the 17th February 1987.

E In his judgment in that earlier case the learned Chief Magistrate concluded "after lay consideration" (whatever that may mean) that the practical effect of the law as it then stood was as follows:

F "(1) that parking meters within the jurisdiction of the SCC have been given statutory control under the Traffic Act since 29.10.65.

(2) that all such parking meters that were in use after the enactment of the Traffic Act and which remain in use (or at least remained in use as at 30th April 1985) are governed by the specific references in that Act.

G (3) that the Weights and Measures Act give statutory control over all devices within its ambit introduced after 1.1.80 and where introduced prior to 1.1.80, over devices continued to be used after 1.1.80, save and except those devices which were specifically controlled under statutory force prior to 1.1.80 and to which no specific reference is made in the

Weights and Measures Act 1979 so as to resolve the otherwise difficult ambiguities which arise.”

The city council’s legal advisor clearly relied on those conclusions of the Chief Magistrate when he submitted to the learned trial magistrate that:

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“...parking meters did not come within (the) ambit of weights and measures.”

I note that other than the city council’s complaint, the charge and a copy of the Chief Magistrate’s judgment, the learned trial magistrate had no evidence before him at the trial of the present case.

B

I say this in spite of the proforma document which appears as page 5 of the record and in which one Francis Hussein is recorded as having been sworn as a witness. What his evidence was (if any) is no-where recorded nor is it disclosed what his role in the entire proceedings was. Was he the city council’s traffic attendant or original booking officer? Did he subsequently serve the city council’s notice of demand? or was he an officer who periodically maintained the parking meters?

C

Also in page 5 the following entry appears:

“EXECUTION:

D

“Facts as in charge,
Excess charge.

Paid/Not paid.”

E

Even if I accepted that the council formally proved from its “witness” the facts alleged in the particulars of the charge, there was still no scientific or technical evidence before the trial magistrate upon which he could make or base any findings.

By scientific or technical evidence I mean evidence as to the construction and internal workings of a parking meter which might assist a court in answering a question such as whether a parking meter is a weighing or measuring, instrument within the ambit of the Weights and Measures Act 1979.

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Be that as it may the learned trial magistrate introduced his judgment in the following manner:

“This is a case in which the Suva City Council came up with about 30 summons of motorists failing to pay excess charges involving parking meter infringements. Since all the defendants had failed to turn up for hearing of their cases, the matters fell to be determined by way of formal proofs.

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Generally, the Courts take the view that statutory bodies have

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A complied with all legal requirements as reposed in them by Acts of Parliament, but when there is doubt, the Courts will ask evidence of such compliance. More so if the matters are subjected to challenge by those brought before the Courts.

B The fact that there was a large body of such summonses, with more likely to come, I cautioned the Suva City Council prosecutors to ensure discharging the fullest burden of proof reposed in the Council including proof of matters relating to the legal operation of parking meters involved vis-a-vis the Weights and Measures Act.”

C With respect to the learned trial magistrate the record did not reveal any failure by the Council to comply with the legal requirements of any Act, nor was any doubt raised in that regard. Indeed nothing had been ‘subjected to challenge’ by anyone other than those matters raised by the trial magistrate himself.

C Furthermore and in this context, the answers of the respondent to the court’s questions at the hearing of the appeal is relevant and merits repeating. He said:

D “(I) didn’t appear in (the) Magistrate’s Court. (I) didn’t raise the question of Weights and Measures before the trial magistrate. I did not in any form or manner challenge the notice which the City Council issued to me. I did not call any witnesses on my behalf. I did not call any witnesses from (the) Ministry of Weights and Measures.”

E Even accepting that courts are required to take judicial notice of all legislation published in the Gazette, that does not mean that magistrates are somehow duty-bound to initiate and investigate issues that they may rightly or wrongly think arises from such legislation nor may they ignore the adversarial system or method by which trials are conducted in this country.

F Speaking of judges and of equal application to magistrates, Lord Denning said:

F “In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries.”
(Jones v National Coal Board [1957] 2 QB 55 at 63)

G Nevertheless, the learned trial magistrate specifically raised the issue by drawing the attention of the council’s representative to the provisions of the Weights and Measures Act. It cannot therefore be ignored.

I have no doubt that in doing so and without saying it in so many words, the learned trial magistrate required either strict-proof that the city council’s parking meters complied with the verification, certification and stamping requirements of the Weights and Measures Act 1979 or, alternatively, that the city council

persuade him by legal argument that the Weights and Measures Act did not apply to its parking meters.

The fact that on its next appearance the city council chose to pursue only the latter course was a matter entirely for it and its advisors to decide.

The final outcome of it all was that the city council failed to persuade the learned trial magistrate who was driven to conclude:

“ that the parking meters reflected in the charges and also all parking meters used by the Suva City Council for industrial purposes are required by Section 19(1) to (4) and other relevant sections of the Weights and Measures Act to be tested and duly certified in accordance with the machinery and procedure laid down therein I accordingly dismiss all such summons before this Court.”

In its petition of appeal the city council has advanced 2 grounds:

- “(i) That the learned magistrate erred in law in deciding that S.19(1) to (4) mandatorily required all Suva City Council parking meters to be verified and relevant certificates obtained as laid down under S. 19 of the Act.
- “(ii) That the learned magistrate erred in finding: “It was not disputed that parking meters do qualify as falling under the Weights and Measures Act.” when in fact there was no evidence in this case to support such a finding.”

(viz. p.3 para 1 line 12 of the magistrate’s judgment.)

During the hearing of the appeal the city council was represented by counsel while the respondent appeared in person. Written submissions were also filed by learned counsel for the appellant.

In the light of the important issues raised with regard to the various legislative provisions involved and the potentially far-reaching consequences of a decision on this appeal, I sought the assistance of the Attorney-General’s Department.

It is appropriate to record that I was much assisted by the written and oral submissions of the learned Acting Deputy Solicitor-General who appeared as *amicus curiae*.

It is common ground that there now exist two seemingly conflicting judgments of the Suva Magistrates’ Court as to whether or not parking meters installed by the Suva City Council in the City of Suva fall within the ambit of the Weights and Measures Act 1979.

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A In order to resolve that conflict it is necessary to examine the relevant legislative provisions. Needless to say such an examination is also necessitated by the appellant's first ground of appeal and the submissions in support thereof.

The principal and only legislative provisions dealing specifically with parking meters are to be found enacted in the Traffic Act (Cap 176) and collected in Part VI under the heading "parking meters".

B It comprises six sections dealing, inter alia, with provision for the designation of parking places and the installation of parking meters by a highway authority (sections 76 and 77); provision for the prescription, payment and accounting for charges, fines and penalties arising from the use of parking meters and prosecutions undertaken in regard thereto (sections 76; 77 and 80) and finally, provisions providing for offences relating to parking meters, and the institution of proceedings and matters of proof in such proceedings (sections 79; 79A and 79B).

C The Traffic Act came into force on the 29th of October 1965 and PART VI was first applied to the City of Suva by Legal Notice No.130 of 1976 (viz.: Section 75).

By virtue of section 76 of the Traffic Act (so far as relevant for present purposes)

D "A highway authority may apply for authority to make an order designating parking places, on roads in any city and may make charges for vehicles left therein."

E By definition the Suva City Council is the "highway authority" for the City of Suva and pursuant to authority granted to it under Section 76 the Parking Meters (Suva) Order (hereafter referred to as the Order) was gazetted in 1977.

It provides, amongst other things, for those matters enumerated in section 76 (2)(a) of the Act and includes the following relevant definition:

F "*parking meter means a mechanical appliance designed for the purpose of measuring and indicating the time within which a vehicle is or may be parked at a metered space and installed thereat pursuant to the provisions of this Order and includes the standard to which the meter is affixed*" (my emphasis)

In a schedule to the Order various lengths on either side of Robertson Road in Suva have been designated metered zones for the purposes of the Order.

G More specifically, in relation to parking meters, Section 77(1) of the Traffic Act requires the provision of parking meters in respect of each designated parking space and Section 77(4) imposes on a highway authority :

"...the duty...to erect, maintain and keep parking meters in a proper state of repair and to take reasonable steps for the periodical inspection thereof, and to deal with any found to be out of order,

and to secure the testing of the meters (both before they are brought into use and from time to time thereafter), and to record the date on which and the persons by whom a meter has been tested.
(the emphasis is mine)

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Learned counsel for the city council relies heavily on this subsection as revealing a legislative intention to provide exclusively and comprehensively for parking meters such that: "...the legislature must have known (when it subsequently passed the Weights & Measures Act) that parking meters were a class of goods which had already been accommodated for under Section 77(4) of the Traffic Act and (therefore the Weights and Measures Act) could not apply to this type of good".

B

Basic to the appellants submissions is the notion that there is some sort of collision or inconsistency between the provisions of the Traffic Act and the Weights and Measures Act in their applicability to parking meters.

C

The Acting Deputy Solicitor-General on the other hand generally agreed with the view of the learned trial magistrate which is succinctly summarised in the following passage in his judgment where he said:

"I cannot find anything in the Traffic Ordinance which ties down the hands of the Central Government from legislating further on matters affecting parking meters. What S77(4) does is to impose certain duties on Suva City Council in relation to parking meters. It does not confer on the Council an ultimate authority to be the sole arbiters of the mode, nature, or method of testing required over such meters. I find it consonant (sic) with the general objects of S77(4) that the legislature in its wisdom should have proceeded to enact another provision to say by whom the testing of such meters were to be carried out. This it did by enacting the Weights and Measures Act. Section 19(1) and subsection (4) extend to parking meters which are standard units of measurement of time."

D

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Clearly the learned trial magistrate was of the view that there was no fundamentally irreconcilable inconsistency between the two legislative provisions.

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I confess that having carefully considered the reasoning in the earlier judgment of the learned Chief Magistrate and the various arguments so ably advanced in this appeal by learned counsel for the appellant, this court can find no inevitable collision or, irreconcilable conflict in the plain meaning of the words used or in the application of the provisions of both Part VI of the Traffic Act and the applicable provisions of Weights and Measures Act 1979, to parking meters.

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Nor may interpretive aids or rules of statutory construction be resorted to if the result is to ignore, alter or overcome the clearly over-riding language of Section 3 of the Weights and Measures Act which reads:

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A “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other written law or in any instrument having effect by virtue of any other written law.”

However before leaving the provisions of the Traffic Act and for the sake of completeness I note that the Central Traffic Authority is required to approve in writing the type and design of all parking meters. (Section 77(1)).

B Furthermore, Section 79(5) of the Traffic Act contains two rebuttable presumptions in the prosecution of offences under Section 79. These are that:

“(a) a parking meter provided in a parking place...is of a type and design approved by the (Central Traffic) Authority; and

C (b) the parking meter was in proper working order at the time the vehicle was left in the parking place. “

The offence with which the respondent was charged in the Magistrates Court is one stated to be:

D “: Contrary to Paragraphs 9 and 10 of the Parking Meter (Suva) Order 1977 and Sections 79 and 79A... (of the Traffic Act)”

E Clearly therefore the dual presumptions above-mentioned were applicable in the Magistrates Court proceedings in this instance and in the absence of evidence to the contrary, the learned trial magistrate was obliged to hold that the parking meter in question was an approved one and more importantly, was in proper working order at the relevant time.

F In other words, in the absence of any evidence to show the contrary, and adapting the wording in the definition of a parking meter to be found in the Parking Meters (Suva) Order it is conclusively presumed in any prosecution for an offence contrary to Section 79 of the Traffic Act, that the parking meter is ‘...measuring and indicating the time...’ accurately.

Turning then to the Weights and Measures Act 1979 which by its long title is an Act:

G “To establish standards of Weights & Measures based on the metric system and to provide for enforcement of standards of Weights and Measures and for matters connected therewith or incidental thereto.”

By a Legal Notice No.212 of 1979 the Act was brought into force in its entirety on the 1st day of January 1980 some 6 months after it was passed by Parliament.

I say ‘in its entirety’ advisedly because of the presence of a proviso to Section 1 which in terms enables different sections of the Act to be brought into force in

different areas of Fiji at different times and in relation to different classes of goods and users if the responsible Minister thought it appropriate to adopt such a piece-meal approach.

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It is convenient at this stage to refer to several useful definitions in the Weights and Measures Act 1979, in particular:

“Weight or Measure” means a weight or measure specified by or under this Act, and includes a weighing or measuring instrument;

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“Weighing or Measuring instrument” means any object, instrument apparatus or device, or any combination thereof which is or is intended to be used exclusively or additionally, for the purpose of making any weighing, measurement, grading or counting and includes any appliance, accessory or part associated with any such object, instrument, apparatus or device;

C

“public weighing or measuring instrument” means any weighing or measuring instrument open for use by the public, or for the use of which a charge is made;

“verification” with its grammatical variations and cognate expressions, includes in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms with the standards established by or under this Act and also includes re-verification and calibration; and

D

“standard weight or measure” means a weight, measure or number which conforms with the standards established in relation thereto by or under this Act.

E

By Section 5(3) the base unit of time is declared to be “the second” and this base unit is further declared by Section 7 to be “the standard unit” for measuring time. How long a second lasts is later defined in the first schedule to the Act in quite incomprehensible scientific jargon.

F

The primary question inherent in the appellant’s second ground of appeal and which has been posed and answered in different ways by different magistrates on two different occasions is the simple, though technical, one:

“Are parking meters within the ambit of the Weights and Measures Act 1979?”

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Both magistrates in their respective judgments appear to accept that parking meters technically fell within the ambit of the Weights and Measures Act 1979 but each was driven to a different conclusion as to the applicability of the Act to parking meters installed by the council and in use prior to the coming into force

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of the Act.

A Manifestly it is clear that it was only the Chief Magistrate who had the benefit of any evidence led before him upon which he might have been able to make any positive findings on this issue, and although he accepted that all of the evidence given by the Weights and Measures officials was accurate or were statements of properly held opinions (albeit hearsay), nevertheless, as a matter of statutory construction he concluded that the council was not obliged to have its parking meters verified.

B The learned Chief Magistrate's decision was not appealed against and cannot now be altered in this appeal. Nevertheless the method of statutory construction adopted in that decision is, if I may say so, substantially similar to that advanced by learned counsel for the appellant and to that extent only is the decision being looked at in this appeal.

C The learned trial magistrate in the judgment now appealed against in the absence of any evidence and purporting to be based on the views of the Chief Magistrate in the earlier case,

D " ...held that from a technical point of view (whatever that means) all parking meter-type devices or apparatus were within the ambit of the Weights and Measures Act."

E With respect to the learned trial magistrate, in the absence of any evidence being led before him, it was wholly irregular for him to adopt or use evidence or findings of another magistrate, albeit undisputed, made in another case in order to support a conclusion that he may have held in regard to the applicability of the Weights and Measures Act to parking meters.

F Had it not been for the scholarship of the Magistrate's judgment and in deference to the extensive written and oral submission of learned counsel for the appellant and the Acting Deputy Solicitor-General, I would have been content merely to uphold the appellant's second ground of appeal and quash the decision of the learned trial magistrate leaving the answer to the primary question to be provided or another, perhaps evidentially, more suitable occasion.

G To begin with I am mindful that parking meters are a notorious fact of everyday-life' in Suva more so for the motoring public who ignore it at their peril, and, in my humble opinion it may be judicially noticed that parking meters are erected on most streets in central Suva, are primarily operated by a coin and measure a progressively diminishing period of time (see: para 8 of the Parking Meters (Suva) Order and the Schedule thereto).

I am satisfied that by definition a parking meter is a "measuring instrument" within the meaning of that term in the Weights and Measures' Act. Furthermore, it is an instrument which measures time for which the Weights and Measures Act has established a base and standard unit of measurement - 'the second'.

Additionally, the fact that parking meters are erected along public streets, are publicly available and are statutorily required to be used, fairly places them, in my view, squarely within the expression "...open for use by the public..." as it appears in the definition of a "public measuring instrument"

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By Section 22(2) of the Weights and Measures Act such instruments are required to be verified and stamped before they can be lawfully used and any use of them without the necessary verification and stamping is an offence by the terms of Section 50 for which a maximum fine of \$200 may be imposed.

B

From the above it is clear in my mind that the short answer to the primary question is 'Yes', however that is not the end of the matter and it is by no means decisive of this appeal.

The reason why this is so is because there is in my view a central theme which permeates the Weights and Measures Act which the learned trial magistrate correctly described as "(an Act) principally designed to ensure in the public interest that all measuring, weighing and other similar apparatus are governmentally tested for correctness and accuracy, and (are) duly certified..."

C

To achieve this end the legislature required all measuring instruments (including parking meters) which come within the ambit of the Weights and Measures Act to be submitted for verification and stamping by a duly appointed or certified official.

D

But whilst that may be a general requirement of the Act, where is the need to test, verify, stamp and certify a measuring instrument which is statutorily presumed to be in proper working order whenever it is alleged that an offence has been committed in regard to it?

E

In my view such a presumption implicitly excludes any and all enquiry under the Weights and Measures Act unless and until the contrary is shown. i.e. that the parking meter is not in proper working order.

In this latter event where a parking meter is shown or proved not to be in proper working order then in my view the prosecution must inevitably fail since by para 12 of the Parking Meters (Suva) Order:

F

"...the Order shall be of no force or effect in relation to...any metered space if the parking meter installed thereat is out of order."

Theoretically speaking, even an unverified, unstamped parking meter may still render an accurate reading or measurement. Conversely, the mere fact that a parking meter has been verified and duly stamped as conforming to certain established standards is no guarantee of actual accuracy for any given measurement at any given time thereafter.

G

Furthermore the Weights and Measures Act does not presume accuracy for verified and stamped instruments nor do I understand that to be the effect of Section

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21(1) of the Act.

A Perhaps the legislature aware of this truism decided in its wisdom to resolve it by way of a legal presumption which cast the evidential burden on the defendant to show that the parking meter in respect of which the offence was alleged to have been committed was not in proper working order.

B Needless to say in my considered opinion much more is needed to rebut the statutory presumption that a parking meter is in proper working order, than merely to prove or show that it has not been verified and stamped under the Weights and Measures Act 1979. Much less can a bare assertion of non-compliance with the Act suffice.

C Nor is it in my view a matter of the city council "...relying on the existence of unlawfully operated parking meters to found a case on motorists who use it for parking purposes" but rather one where the city council relies on approved parking meters that are presumed to be in proper working order.

D What other concern could there be for motorists who have to use parking meters than that they be in proper working order? and what greater mischief was the Weights and Measures Act intended to overcome than that measuring instruments should conform to certain standards and be accurate in its measurements?

The presumption answers both questions in favour of the city council and firmly lays the burden of rebutting it on the motorist.

E In the result the appeal is allowed and the decision of the learned trial magistrate is quashed. However, as this matter is now more than a year old, in fairness to the respondent who was a reluctant party to this appeal, I do not propose to send this case back to the Magistrates' Court.

I also make no order as to costs.

(Appeal allowed.)

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