

15/84

## SUPREME COURT OF VICTORIA

***RUTHVEN v THE BARONS TABLE SPECIALTY MEATS PTY LTD***

Hampel J

22 November 1983

**HEALTH – ADULTERATED FOOD – SALE OF – FOOD PURCHASED FOR ANALYSIS – CRUMBED VEAL SCHNITZEL – WHETHER A "PREPARATION" OF MEAT SO AS TO BE CLASSIFIED AS MANUFACTURED MEAT – SAMPLE DIVIDED AT PLACE OTHER THAN WHERE PURCHASED – WHETHER PROPER PROCEDURE – NO METHOD OF ANALYSIS PRESCRIBED IN REGULATION FOR MANUFACTURED MEAT – WHETHER REGULATION INVALID FOR UNCERTAINTY: HEALTH ACT 1958, SS240, 281; FOOD AND DRUGS STANDARDS REGULATIONS 1966 (No. 296), R26(7).**

Sub-regulation 26(7) of the *Food and Drugs Standards Regulations* 1966 provides (insofar as relevant):

- (a) Manufactured meat not otherwise standardised in this regulation is a preparation of one or more kinds of meat whole, minced, chopped or combined, cooked or uncooked, with the addition of salt, saltpetre, nitrate, sugar, vinegar, spices, herbs or edible foods or oils, flavouring or other wholesome food substances singly or in combination, treated or not treated with smoke.
- (b) Manufactured meat whether or not enclosed in a casing, shall contain not less than 66 parts per centum of meat.

A Health Inspector went to a Supermarket where he obtained some 20 samples of food. One of the samples was crumbed veal schnitzel which the Inspector paid for at the check-out. The Inspector then went to the preparation room some 30 paces from the check-out counter, and divided the schnitzel into 3 uniform parts. One of these parts was subsequently analysed and found to contain 61.1% of meat. The defendant company was charged in that it sold food which did not comply with the standard prescribed by the *Food and Drugs Standards Regulations* 1966 namely, that it sold manufactured meat which contained less than 66% of meat. The charge was found proved. On order nisi to review—

**HELD: Order nisi absolute.**

**(1) To be a preparation of meat so as to be classified as manufactured meat within Reg 26(7) of the *Food and Drugs Standards Regulations* 1966, the meat itself must undergo some process whereby the addition of wholesome food to it changes or in some way affects its physical or chemical state, composition or characteristics as meat.**

**(2) As the veal schnitzel could not be said to be a "preparation" of meat with the addition of wholesome food, then it was not "manufactured meat" within the meaning of Reg 26(7).**

**(3) Obiter. By taking the food sample away from the point of sale, dividing and separating it in another room at some unspecified time, the Inspector did not comply with the procedure laid down in s281(1) (b) of the *Health Act* 1958.**

**(4) Obiter. Because Reg 26(7) fails to provide the method of determining the meat content in "manufactured meat", it is doubtful whether the sub-regulation is valid.**

**HAMPEL J:** *[After setting out the facts and the provisions of Sub-Regulation (7), His Honour continued]:* ... [5] Before me Mr Fagan QC, who with Mr Kemelfield appeared for the applicant, pursued his case by reference to three arguments. His first argument was that the veal schnitzel in question did not fall within the definition of "manufactured meat" in Regulation 26(7)(a) and therefore the requirement that it must contain 66 per cent of meat, did not apply. His second argument was based on the provisions of s281 of the *Health Act*. It was to the effect that this was a compulsory sale under the Act and the sale took place at a cash register. Because the division and separation of the schnitzel into three parts took place at some uncertain time up to an hour later, and because it occurred in the preparation room, a considerable distance away from the register, there [6] was non-compliance with the requirement of s281(1)(b) "that any person purchasing food or drug or substance with the intention of submitting the same for analysis shall (b) divide the same into not less than three parts to be then and there separated and each part to be marked and sealed or

fastened up in such a manner as its nature will permit." Mr Fagan's further argument was that sub-regulation (7) was invalid because of uncertainty in that it did not indicate a method for the determination of the 66 per cent meat content which it requires in manufactured meat. Although this was not specifically argued below, the Magistrate was generally referred to that issue. In those circumstances and by consent of the respondent, I allow an amendment of the grounds so as to allow this argument to be relied on in these proceedings.

As to definition of "manufactured meat", Mr Fagan's argument was that the word "manufactured" relates to the meat itself and as the meat – that is the veal in the veal schnitzel – had not been in any way treated or dealt with, it was not manufactured meat. The mere fact that it had been dipped in breadcrumbs did not bring it within the definition of manufactured meat. The physical or chemical characteristics of the meat had not been changed, it was merely surrounded by breadcrumbs.

[7] Mr Fagan pointed to the structure of Regulation 26 and pointed out that the regulation is largely concerned with what preservatives are permitted in meat and specific types of meat are dealt with. He submitted that sausage meat is a variety of manufactured meat and has been treated separately for a specific reason – namely, to provide for minimum meat content and a specific preservative content requirement which are different from other manufactured meats. So 75 per cent of meat is needed in sausages but only 66 per cent in other manufactured meats. Mr Fagan further pointed to the requirement as to preservative content and the difference between non-manufactured meat, sausage meat and manufactured meat. Manufactured meats must, for example, be free of sulphur dioxide as a preservative. To treat veal surrounded by breadcrumbs as manufactured meat, argued Mr Fagan, would produce the surprising if not ridiculous situation permitting use of preservatives in pieces of veal which are sold without breadcrumbs. They cannot have preservatives but, if dipped in breadcrumbs, could lawfully be sold with sulphur dioxide as a preservative.

Mr Fagan pointed out that it would be absurd if a butcher who thought his veal was looking a little old could spread it with preservatives in the evening and he able to sell it the next morning merely by dipping it in breadcrumbs. That situation would be the inevitable consequence of the argument on behalf of the respondent. [8] Mr Fagan further argued that in its ordinary and natural meaning, the word 'manufactured' as referable to meat, is not appropriate where nothing is done to the meat except the encasing of it in breadcrumbs.

Mr Fagan relied on a number of decisions of the High Court as to the meaning of "manufactured" – particularly in taxation and Sales Tax areas. He relied on the *FCT v Rochester* [1934] HCA 17; [1934] 50 CLR 225; 2 ATD 466 and *MP Metals Pty Ltd v FCT* [1968] HCA 89; (1967-1968) 117 CLR 631; (1968) 14 ATD 407; (1968) 40 ALJR 538. I do not find these decisions of direct assistance. The concept of manufacture for those purposes has little or no bearing in my view on the question to be decided in this case. He also referred to a New Zealand decision in *Trippins Limited v Heron* [1937] NZLR 566. It appears that a milk shake was found not to be manufactured milk. Similarly, condensed milk has been found not to be manufactured milk. Finally, Mr Fagan drew my attention to the proposition that as the legislation in question here is of a penal character, it ought to be interpreted strictly and in favour of the subject. (*Rowlands v Hamilton* [1971] 1 WLR 647 at 650; [1971] 1 All ER 1089 at 1090).

Mr Southall, who appeared for the respondent, submitted that I should look at the ordinary and [9] natural meaning of the words in Regulation 26(7) and as a matter of statutory interpretation not go beyond it. He referred me to the principles set out in Maxwell on *Statutes* 12th Edition, p28; Craies *Statute Law*, 7th Edition, p64 and the cases cited in chapter 5 thereof. He submitted that looked at in that way, the word 'manufacture' merely refers to some act in the manufacturing process and so manufactured meat includes whole meat with the addition of wholesome food – in this case, the breadcrumbs. "Preparation" as used in the sub-regulation need not involve disintegration or re-integration of meat. He submitted therefore, to be classified as manufactured meat, it is unnecessary that there should be any alteration in the physical or chemical composition of the meat and that it was sufficient if the veal in this case had wholesome food such as the breadcrumbs placed around it, to bring it within the ambit of sub-regulation (7).

Mr Southall conceded that such an interpretation may have the wide and perhaps

undesirable implications pointed out by Mr Fagan but he argued that that, at most, was a matter which may require re-drafting of the regulation and was insignificant in the interpretation of it. In my view the veal schnitzel, the subject matter of these proceedings, does not fall within the ambit of Regulation 26(7) because it is not, [10] a "preparation" of meat with the addition of wholesome food. To be a "preparation" of meat so as to be classified as manufactured meat within the sub-regulation, the meat itself must, in my view, undergo some process whereby the addition of wholesome food to it or as otherwise envisaged by the sub-regulation, changes or in some way affects its physical or chemical state, composition or characteristics as meat. This interpretation does no violence to the natural or ordinary meaning of the words 'manufactured' or 'preparation'. Sub-regulation (7) is in the nature of a catch-all provision in Regulation 26 for it deals with manufactured meat not otherwise standardised in this regulation.

I am assisted in reaching the conclusion which I have reached, by reference to the other sub-regulations of Regulation 26 and the reference to the other meats with which the regulation specifically deals. Because in my view the applicant must succeed on grounds (i), (ii), (iv), (v) and (vi), all of which relate to the question as to whether the food, the subject matter of this information, was "manufactured meat" within the meaning of Regulation 26(7), it becomes unnecessary for me to decide the other questions raised by the applicant. However, after hearing argument in relation to questions of compliance with s281 of the *Health Act*, I am of the opinion that in the circumstances [11] of this case, the actions of the respondent in taking the veal schnitzel away from the register, dividing and separating it in the preparation room at some unspecified time within an hour of the purchase, do not amount to sufficient compliance with the requirement of s281(1)(b).

In my view, the section demands the division and separation to be effected "then and there" that is, by reference to the time and place where the purchase was made. Further and without deciding the question, I should add that I have considerable doubt about the validity of Regulation 26(7) because of its failure to provide for the method of determination of the 66 per cent meat requirement in "manufactured meat". It follows that the order nisi will be made absolute on the grounds indicated.

**APPEARANCES:** Mr Fagan QC and Mr RJ Kemelfield, counsel for the defendant company The Barons Table Specialty Meats Pty Ltd. Mr AG Southall, counsel for the informant Ruthven.

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