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In the Privy Council.

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LONDON

No. 17 of 1949.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
V.C.1.
17 JUL 1953
INSTITUTED
LEGAL STUDIES

IN THE MATTER of an APPLICATION for a MANDATE in the nature of a Writ of Certiorari.

BETWEEN

NAKKUDA ALI APPELLANT

AND

M. F. DE S. JAYARATNE RESPONDENT.

CASE FOR THE RESPONDENT

1.—This is an Appeal from a Decree, dated the 8th October, 1947, of the Supreme Court of Ceylon (Canekeratne, J.), ordering the discharge of a Rule Nisi, dated the 21st March, 1947, directing the issue on the Respondent of a Mandate in the nature of a Writ of Certiorari. RECORD
p. 29

2.—The Respondent is the Controller of Textiles appointed under Reg. 2 of the Defence (Control of Textiles) Regulations, 1945. The Appellant is a partner in the firm of S. Mohamed Hussain & Co., who carried on business as textile dealers in Colombo. The Respondent issued to the Appellant's firm, under Reg. 3 of the Regulations, a textile licence. p. 2, ll. 11-15;
p. 12, ll. 20-29
10 By Reg. 4, no person who does not hold a textile licence may carry on business as a dealer in textiles.

3.—With regard to coupons and rationed textiles the Regulations provide (inter alia) as follows:—

Reg. 36 (1): "The Controller shall cause coupons to be issued to the inhabitants of Ceylon in such numbers, in respect of such periods, and in such manner as he may determine."

Reg. 40 (1): "No dealer, other than an indent agent shall, by himself or by any servant or agent, sell or supply any rationed textile

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to any person unless the appropriate number of coupons is surrendered to that dealer by that person.

- (2) : “ The provisions of paragraph (1) of this regulation shall, mutatis mutandis, apply to every case where any rationed textile is appropriated by any dealer for his own use or is supplied to any partner or employee of that dealer.”

* * * * *

- (3) : “ No person shall purchase or acquire any rationed textile from any dealer otherwise than by surrendering the appropriate number of coupons to that dealer.”

10

Reg. 41 : “ Every dealer, other than an indent agent, who imports any rationed textiles into Ceylon shall transmit to the Controller, in such manner and at such intervals as the Controller may by order prescribe, the coupons and coupon equivalent documents which may be surrendered to him by those who purchase or obtain any of those textiles from him.”

The Appellant is not an indent agent.

pp. 12-20

4.—The procedure for the transmission of coupons by dealers to the Controller is described as follows in affidavits, filed in these proceedings, 20 by the Respondent and other employees of the Textile Control Department :

p. 13, ll. 9-15

(a) There is a Coupon Bank, in which is kept a ledger account for every dealer licensed to import textiles. Each dealer's account is debited with the number of coupons appropriate to the textiles which he imports and credited with the number of coupons which he surrenders.

p. 23, ll. 16-19

(b) Each dealer has a paying-in book, supplied by the Respondent. A dealer who wishes to surrender coupons fills in a paying-in slip and brings it and the coupons to the Bank.

p. 13, ll. 20-26,
28-30
p. 18, ll. 5-19,
p. 19, ll. 19-34

(c) The receiving clerk at the Bank counts the coupons, checks the 30 number against the number shown in the foil and counterfoil of the slip, enters the number in the scroll book, and obtains the signature or initials of the depositor to this entry. The receiving clerk then passes the coupons and the slip to the assistant shroff.

p. 13, ll. 30-32
p. 16, ll. 24-30

(d) The assistant shroff checks the number of coupons against the number shown in the slip, initials both foil and counterfoil of the slip, and passes the slip to the shroff.

p. 13, ll. 37-40
p. 15, ll. 28-34

(e) The shroff enters in a register the number of coupons shown in the slip, puts a serial number on the foil and the counterfoil, signs the foil and initials the counterfoil, and passes the slip to 40 the chief clerk.

(f) The chief clerk countersigns both foil and counterfoil, records in the credit control book the number of coupons shown in the slip, detaches the foil, and returns the paying-in book (containing the counterfoil) to the dealer. p. 13, ll. 40-45

(g) The foil is then passed to the ledger clerk, who keeps the dealer's ledger account. p. 13, ll. 46-47

5.—In January, 1947, discrepancies, relating to the coupons surrendered by a certain dealer, were discovered between the ledger account, on the one hand, and the scroll book, the shroff's register, and the credit control book, on the other hand. Thereupon the Respondent ordered a check of certain dealers' accounts, and the following discrepancies relating to the Appellant were discovered :— p. 12, ll. 30-35
p. 13, ll. 1-6

(i) On the 30th November, 1946, the Appellant's firm surrendered, according to the scroll book, shroff's register, and credit control book, 669 coupons ; according to the ledger account, 5,669 coupons. p. 14, ll. 16-20

(ii) There was a similar discrepancy between entries for the 21st December, 1946, the respective figures being 992 and 2,992.

6.—The shroff, assistant shroff, and receiving clerks concerned identify, in their affidavits, their signatures and initials on the paying-in slips in question. The first receiving clerk states that the entry in the scroll book for the 30th November (of 669 coupons) is in his handwriting and is correct ; identifies his signature thereto, and states that the entry, after being completed by him, was initialled in his presence by the depositor. The second receiving clerk gives the same testimony about the entry for the 21st December. p. 15, ll. 35-36 ;
p. 16, ll. 34-35 ;
p. 17, ll. 1-3 ; p. 18, ll. 25-26 ; p. 19, ll. 40-41
p. 18, ll. 20-25
p. 19, ll. 35-40

7.—The two paying-in slips were sent to the Government Examiner of Questioned Documents. He reported that certain additions had been made to the slip of the 30th November, but found nothing definite to indicate additions in that of the 21st December. p. 20, ll. 19-31

8.—The Respondent appointed an Assistant Controller of Textiles to conduct an inquiry into the matter, and considered statements made by the Appellant, the Appellant's partner, and one Aliyar, an employee of the Appellant's firm who surrendered the coupons on the days in question. On the 22nd February, 1947, the Respondent wrote to the Appellant's firm pointing out the discrepancies. In this letter, the Respondent said that interpolations had been made in both paying-in slips, in the handwriting in which the slips had originally been completed ; and he had reason to believe that the Appellant had got these interpolations made, in order to get a larger credit in his ledger account than he was entitled to have. He invited the Appellant to submit an explanation in writing by 4 p.m. on the 25th February, and told him that he could see the documents mentioned in the letter at any time during office hours. p. 14, ll. 40-43
p. 8

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9.—An answer to this letter was sent by the Appellant's proctor on the 25th February, stating :

pp. 9-10

- (i) that the number of coupons surrendered on the 30th November and the 21st December were 5,669 and 2,992 respectively, and the Appellant had himself completed paying-in slips containing these figures ;
- (ii) that Aliyar invariably signed the Appellant's paying-in slips, and Aliyar's signature did not appear on the slips containing the interpolations, which slips were not completed in the hand-writing of the Appellant or any of his employees ; 10
- (iii) that the monthly statements submitted by the Appellant to the Assistant Controller on the 2nd December, 1946, the 6th January, 1947, and the 5th February, 1947, had been accepted without question.

The proctor suggested :

- (i) that some unknown person had destroyed the original two slips and made out those containing the interpolations ;
- (ii) that Aliyar had either signed the scroll book without checking the entry, or signed it in blank, leaving the clerk to fill in the number of coupons subsequently. 20

p. 14, l. 40 to p. 15,
l. 7

10.—After considering this letter, and hearing counsel for the Appellant, the Respondent had reasonable grounds to believe that the Appellant was unfit to hold a textile licence, and revoked, under reg. 62, the licence granted to the Appellant's firm. He informed the Appellant's firm of this revocation by a letter dated the 10th March.

p. 10, ll. 18-43

11.—The aforesaid regulations provide in regard to offences and punishments (inter alia) as follows :—

Reg. 51 : Where any servant or agent of a dealer does or omits to do any act or thing which done or omitted to be done by such dealer, would constitute a contravention of any provision of these 30 regulations, the dealer shall be deemed to have acted in contravention of those provisions.

Reg. 58(1) : Where the Controller is satisfied that any dealer has contravened any of these regulations other than Regs. 6, 16, 22, 29 and 30, the Controller may without prosecuting or sanctioning a prosecution of that dealer, by order (hereinafter referred to as a " punitive order ")—

- (a) suspend for any period specified in the order, or cancel, any textile licence or all the textile licences issued to that dealer. 40

* * * * *

- (2) No punitive order shall be made against any dealer except after notice to him to show cause, within a period specified in the notice, why such order should not be made, and except on his failing to show cause within such period or on his not showing sufficient cause. Such notices sent to him by letter despatched by registered post to his usual place of business or residence shall be deemed to have been served on him on the date on which the letter would have been delivered in the ordinary course of post.
- 10 (3) Any dealer against whom a punitive order is made may appeal against it to a Tribunal of Appeal constituted under Reg. 58A, before the expiry of a period of fourteen days after the date on which such order is communicated to that dealer by or on behalf of the Controller.
- * * * * *
- (6) Where a punitive order is made against any dealer, he shall not be prosecuted for the offence constituted by the contravention in respect of which that order was made.
- 20 58A. (1) For the purposes of these regulations, there shall be a Tribunal or two or more Tribunals of Appeal.
- * * * * *
- (4) It shall be the duty of a Tribunal to hear and determine—
- (a) all appeals preferred in accordance with the provisions of paragraphs (3) and (4) of Reg. 58
- (5) A Tribunal may—
- (a) in dealing with any appeal referred to in paragraph 4 (a) of this regulation, affirm, vary or annul the punitive order against which the appeal has been preferred, or make any order which the Controller could originally have made under paragraph (1) of Reg. 58 on the matter to which the appeal relates
- 30 (6) The order of a Tribunal on any appeal referred to in paragraph (4) of this regulation shall be final and conclusive.
59. Any person who acts in contravention of any of these regulations shall be guilty of an offence, and shall, on conviction after summary trial before a Magistrate, be punished.
- * * * * *
- 40 60. Where any dealer is convicted by a court of a contravention of any of these regulations and no appeal against the conviction is preferred or the conviction is confirmed in appeal, the Controller may cancel any textile licence or all the textile licences issued to that dealer.

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61. (1) Where a punitive order made against any dealer comes into force or where an appeal against such order is preferred under Reg. 58 and the Controller's finding that the dealer has committed the contravention referred to in such order is affirmed by an order of a Tribunal, the Controller may order any regulated textile in respect of which such contravention was committed to be forfeited to His Majesty.
- (2) Where any person is convicted by a court of a contravention of any of these regulations, the court may order any regulated textile in respect of which the contravention was committed to be forfeited to His Majesty. 10
62. Where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer, the Controller may cancel the textile licence or textile licences issued to that dealer."

pp. 2-4

12.—The Appellant presented to the Supreme Court of Ceylon a Petition, supported by an affidavit, dated the 12th March, 1947, praying the Court to issue a mandate in the nature of a writ of certiorari quashing the Respondent's order. The grounds set out in the Petition were :

p. 3, l. 37
p. 4, l. 13

- (i) that the Respondent's allegations were untrue ; 20
- (ii) that the Appellant had had no opportunity of proving this at an inquiry ;
- (iii) that the Appellant had surrendered over 80,000 coupons over a period of twenty months and the alleged irregularity concerned only 7,000 coupons ;
- (iv) that the allegations were of serious criminal offences, with which the Respondent had no jurisdiction to deal under Reg. 62 ;
- (v) that the Respondent in revoking the Appellant's licence was not exercising jurisdiction bona fide under Reg. 62 ;
- (vi) that the Respondent, being an interested person, had no 30 jurisdiction to act under Reg. 62.

pp. 11-12

13.—On the 21st March, Wijeyewardene J. issued a rule nisi, and ordered the Respondent to appear and show cause why a mandate should not be issued. The application was argued before Canekeratne J. on the 26th September, and the learned Judge delivered a considered judgment on the 8th October, 1947.

pp. 23-28

p. 23, l. 11 to p. 26,
l. 39
p. 26, l. 40 to p. 27,
l. 39

14.—The learned Judge decided that the Respondent had material before him on which he could reasonably find that there was no delivery of 5,669 coupons or 2,992 coupons, and the Appellant's firm got the

interpolations made. He, however, held that the Respondent's decision could not be set aside for insufficiency of evidence and that it could not be challenged unless he had acted inconsistently with natural justice: and he found that the Appellant's firm had notice of the charge, had particulars of the conduct alleged against it brought to its attention, and had an opportunity of giving an explanation and seeing the relevant documents. The learned Judge concluded, therefore, that there had been no departure from the rules of natural justice, and ordered that the rule nisi be discharged with costs.

p. 27, l. 40 to p. 28, l. 4

p. 28, ll. 15-20

p. 28, ll. 38-39

- 10 15.—The Respondent respectfully submits that in cancelling a textile licence under Reg. 62 he acts in an administrative capacity, so that a mandate in the nature of a writ of certiorari will not lie in respect of such a cancellation. Regs. 58 and 58A provide for the making by the Respondent of punitive orders, against which an appeal lies to a Tribunal of Appeal; but the procedure under Reg. 62 is quite separate and distinct. Canekeratne, J. was bound to follow *Abdul Thassim v. Rodrigo* (1947), 48 N. L. R. 121, in which a bench of five Judges of the Supreme Court held that the Controller of Textiles acting under Reg. 62 is performing a judicial function. The Respondent respectfully submits that that decision
- 20 is wrong. In any event the Respondent is not a person or tribunal to whom s. 42 of the Courts Ordinance applies. The relevant provision of that section is as follows:—

“ The Supreme Court or any Judge thereof, at Colombo or elsewhere, shall have full power and authority to inspect and examine the records of any courts, and to grant and issue, according to law, mandates in the nature of writs of mandamus, quo warranto, certiorari, procedendo, and prohibition, against any District Judge, Commissioner, Magistrate, or other person or tribunal.”

- 30 16.—Alternatively, assuming that a mandate in the nature of a writ of certiorari will lie, the Respondent respectfully submits that the learned Judge was right in holding that it cannot be issued on the ground of insufficiency of evidence or unless there has been a departure from natural justice, and that there had been no such departure in this case. The Respondent submits:

- (i) that in his letter of the 22nd February, 1947, he gave to the Appellant's firm full particulars of the conduct alleged against it;
- (ii) that, by giving the Appellant's firm an opportunity of examining the documents and of sending a written explanation, by considering statements by the Appellant, the Appellant's partner, and Aliyar, and by hearing counsel for the Appellant, he gave the Appellant fair and ample opportunity of stating his case;
- 40 (iii) that there was evidence before him on which he could reasonably reach the decision which he did reach.

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17.—The Respondent respectfully submits that the decree of the Supreme Court of Ceylon was right, and should be affirmed, for the following (amongst other)

REASONS

1. BECAUSE a mandate in the nature of a writ of certiorari will not lie in respect of the cancellation of a textile licence by the Controller of Textiles under Reg. 62.
2. BECAUSE, even if a mandate will lie in respect of such a cancellation, it could not lie in this case because the treatment of the Appellant did not involve any departure from the 10 rules of natural justice.
3. BECAUSE, even if a mandate will lie in respect of such a cancellation, the learned Judge was right in holding that he was not entitled to enquire into the materials or sufficiency of materials on which the Respondent cancelled the licence.
4. BECAUSE in any event (and as the Supreme Court found to be the fact) the Respondent had reasonable grounds for believing the Appellant to be unfit to be allowed to continue as a dealer.

DAVID MAXWELL FYFE. 20
J. G. LE QUESNE.

In the Privy Council.

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CASE FOR THE RESPONDENT

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