17, 1950

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No. 17 1949

Supreme Court of Ceylon
Application No. 115 of the year 1947

IN HIS MAJESTY'S PRIVY COUNCIL ON AN APPEAL FROM THE SUPREME COURT OF CEYLON

In the matter of an Application for a Mandate in the nature of a Writ of *Certiorari*.

BETWEEN

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain, under the name style and firm of " S. Mohamed Hussain & Co."..... *Petitioner-Appellant.*

AND

M. F. DE S. JAYARATNE, Controller of Textiles (Appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo..... *Respondent-Respondent.*

RECORD OF PROCEEDINGS

INDEX

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AND

M. F. DE S. JAYARATNE, Controller of Textiles (Appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo.....*Respondent-Respondent.*

RECORD OF PROCEEDINGS

No. 1

No. 1
Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47

Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari.*

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

(Motion)

In the matter of an Application for a Mandate in the nature of Writ of *Certiorari* under Section 42 of the Courts Ordinance (Cap.6).

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business with Shabandri Mohamed Hussain in partnership under the name style and firm of S. Mohamed Hussain & Co.....*Petitioner.*

Vs.

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo..... *Respondent.*

I file my appointment as a Proctor for the petitioner together with the Petition of Application (with documents marked " A 1 " to " D " as annexures thereto) supported by the affidavit of the petitioner and for reasons stated therein move that Your Lordships' Court be pleased :

(1) to make a Rule Nisi directing the issue on the respondent abovenamed, the Controller of Textiles, appointed as abovenamed, of a Mandate in the nature of a Writ of *Certiorari,* as prayed for in the petition ;

(2) to make order directing the respondent abovenamed that no steps be taken on the footing of the Order of the respondent contained in his letter to the petitioner dated the 10th March, 1947, referred to in paragraph 6 of the petition ; and

(3) to make such Order as the justice of the case may require.

(Sgd.) A. C. M. ABDUL CADER,
Proctor for Petitioner.

Colombo, 12th March, 1947.

No. 1 Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47 —*continued.*

(Petition)

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 12th day of March, 1947.

The Petition of the petitioner abovenamed appearing by A. C. M. Abdul Cader his Proctor states as follows :—

1. The petitioner's firm abovenamed was granted textile licence No. C /1873 under the Defence (Control of Textiles) Regulations and functioned thereunder as licensed dealers and importers in textiles under the name and style of S. Mohamed Hussain & Co., at No. 109/111, Keyzer Street, Colombo.

2. On or about the 22nd February, 1947, the Officers working in the Department of the Controller of Textiles made certain inquiries about an alleged shortage of textile coupons aggregating to 7,000 points in respect of the textile coupons surrendered on behalf of the petitioner to the Textile Coupon Bank on 30th November, 1946, and 21st December, 1946.

3. By Order No. CR. C/1873/4639 dated 20th February, 1947, (marked " A 1 " and filed herewith) the respondent abovenamed, purporting to act under Regulation No. 33 of the Defence (Control of Textile) Regulations 1945, prohibited the petitioner from purchasing or selling any regulated textiles from or to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town.

4. By letter No. CR. C/1873/4369 of 22nd February, 1947, (marked letter " B " and also herewith filed) the respondent abovenamed requested the petitioner to offer any explanation he may have in respect of the allegations set out therein.

5. By letter dated 25th February, 1947, (a true copy whereof marked letter " C " is also herewith filed) the petitioner through his Proctor showed cause and submitted *inter alia* :—

(*a*) that the petitioner denied all and singular the allegations made by the respondent against the petitioner in the aforesaid letter No. CR. C/1873/4369 of 22nd February, 1947 ;

(*b*) that as the allegations made by the respondent abovenamed against the petitioner disclosed criminal offences of a very grave nature which might or might not have been committed by one or more of the employees of the petitioner acting under the instigation of or in concert with the Officers working under the control and supervision of the respondent abovenamed, the

respondent could not at law revoke the petitioner's licence until the criminal offences were investigated into and disposed of in appropriate proceedings ;

(*c*) that the allegations of fraud made by the respondent ought properly to be made against the officers of his Department, who could have exclusively perpetrated the fraud in respect of the textile coupons given for surrender on behalf of the petitioner, to one of his employees, part of whose duties it was to surrender from time to time textile coupons to, and obtain receipt therefor, from the textile coupon bank which as administered under the control and supervision of the respondent abovenamed;

(*d*) that the respondent was not acting *bona fide* in seeking to revoke the petitioner's licence, as his object was to shift the responsibility from himself and the officers of his Department to the petitioner abovenamed, for the fraud which had been committed.

6. Without giving the petitioner an opportunity of an inquiry to enable the petitioner to establish his innocence and to show how the fraud in respect of the textile coupons could have been committed by the officers working under the respondent abovenamed, by reason of the grave defects which were inherent in the system that was adopted by the respondent in the organisation and working of the Textile Coupon Bank, the respondent has by his letter No. CR. C/1873/4369 dated 10th March, 1947, (marked letter " D " and also filed herewith) made order, revoking the petitioner's licence under Regulation 62 of the Defence (Control of Textiles) Regulations 1945, with effect from 10th March, 1947.

7. That by the aforesaid Order of the respondent revoking the textile licence of the petitioner the petitioner is unable to dispose of stocks in hand of the estimated value of about Rs. 65,000 or to clear from His Majesty's Customs at Colombo, textiles imported by him of the estimated value of about Rs. 5,000 or to arrange for the price-marking and disposal of textiles already landed of the estimated value of about Rs. 70,000. The respondent abovenamed has wrongfully and unlawfully instructed the Principal Collector of Customs, Colombo, even before the aforesaid order of revocation was served on the petitioner abovenamed not to allow the petitioner to clear textiles which have been imported and landed in the Port of Colombo.

8. The petitioner humbly submits :—

(*a*) that the allegations made by the respondent against the petitioner are untrue in substance and in fact ;

(*b*) that the petitioner has not been afforded an opportunity of establishing at an inquiry that the said allegations against the petitioner are untrue in substance and in fact ;

(*c*) that during the last 20 months the petitioner has surrendered to the textile coupon bank over 80,000 textile coupons, and the alleged shortage is in respect of only two items of surrender

No. 1 Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47 —*continued.*

aggregating to 7,000 points of textile coupons which the petitioner had sent for surrender to the Textile Coupon Bank ;

(*d*) that the said allegations disclose criminal offences of a very grave nature, like forgery, which the respondent abovenamed had no jurisdiction to determine, with or without an inquiry, under cover of Regulation 62 of the Defence (Control of Textiles) Regulations 1945 ;

(*e*) that the respondent in revoking the petitioner's licence was not exercising jurisdiction *bona fide* under Regulation 62 aforesaid, for the reason abovenamed ;

(*f*) that the respondent abovenamed is in the circumstances referred to above, an interested person and had therefore no jurisdiction to act under Regulation 62 aforesaid.

Wherefore the petitioner prays that Your Lordships' Court be pleased :

(*a*) to issue a Mandate in the nature of a Writ of *Certiorari* quashing the aforesaid Order made by the respondent abovenamed, contained in his letter to the petitioner, dated 10th March, 1947, (marked " D ") ; and referred to in paragraph 6 above;

(*b*) to make Order directing the respondent that no steps be taken on the footing of the aforesaid order dated 10th March, 1947, and referred to in paragraph 6 above ;

(*c*) to grant the petitioner the costs of this application ; and

(*d*) to grant the petitioner such further or other relief as to Your Lordships' Court shall seem meet.

(Sgd. A. C. M. ABDUL CADER,
Proctor for Petitioner.

(Affidavit)

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

I, Nakkuda Ali of No. 109/111, Keyzer Street, Pettah, Colombo, not being a Christian, do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the petitioner abovenamed and a partner of the firm of S. Mohamed Hussain & Co.

2. I was granted textile licence No. C/1873 under the Defence (Control of Textiles) Regulations and I functioned thereunder as a licensed dealer and importer in textiles under the name and style of S. Mohamed Hussain & Company at No. 109/111, Keyzer Street, Colombo.

3. On or about the 22nd February, 1947, the officers working in the Department of the Controller of Textiles made certain inquiries about an alleged shortage of textiles coupons aggregating to 7,000 points in respect of the textile coupons surrendered on behalf of me the petitioner to the Textile Coupon Bank on 30th November, 1946, and 21st December, 1946.

4. By order No. CR. C. 1873/4639 dated 20th February, 1947, (marked " A I " and filed herewith) the respondent abovenamed, purporting to act under Regulations No. 33 of the Defence (Control of Textiles) Regulations 1945, prohibited me from purchasing or selling any regulated textiles from or to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town.

5. By letter No. CR. C. 1873/4369 of 22nd February, 1947, (marked letter " B " and also herewith filed) the respondent abovenamed requested me to offer any explanation I may have in respect of the allegations set out therein.

6. By letter dated 25th February, 1947, (a true copy whereof marked letter " C " is also herewith filed) I, the petitioner through my Proctor showed cause and submitted *inter alia* :

(*a*) that I denied all and singular the allegations made by the respondent against me in the aforesaid letter No. CR. C. 1873/4369 of 22nd February, 1947.

(*b*) that as the allegations made by the respondent abovenamed against me disclosed criminal offences of a very grave nature which might or might not have been committed by one or more of my employees acting under the instigation of or in concert with the officers working under the control and supervision of the respondent abovenamed, the respondent could not at law revoke my licence until the criminal offences were investigated into and disposed of in appropriate proceedings.

(*c*) that the allegations of fraud made by the respondent ought properly be made against the officers of his department, who could have exclusively perpetrated the fraud in respect of the textile coupons given for surrender on my behalf, to one of my employees, part of whose duties, it was to surrender from time to time textile coupons to, and obtain receipts therefor from the textile Coupon Bank which was administered under the control and supervision of the respondent abovenamed.

(*d*) that the respondent was not acting *bona fide* in seeking to revoke my licence, as his object was to shift the responsibility from himself and the officers of his department to me the petitioner abovenamed, for the fraud which had been committed,

No. 1 Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47 —*continued.*

7. Without giving me an opportunity of an inquiry to enable me to establish my innocence and to show how the fraud in respect of the textile coupons could have been committed by the officers working under the respondent abovenamed, by reason of the grave defects which were inherent in the system that was adopted by the respondent in the organisation and working of the Textile Coupon Bank, the respondent has by his letter No. CR. C. 1873/4367 dated 10th March, 1947, (marked letter "D" and also filed herewith) made order, revoking my licence under Regulation 62 of the Defence (Control of Textiles) Regulations 1945, with effect from 10th March, 1947.

8. That by the aforesaid order of the respondent revoking my textile licence, I, the petitioner, am unable to dispose of stocks in hand of the estimated value of about Rs. 65,000 or to clear from His Majesty's Customs at Colombo textiles imported by me of the estimated value of about Rs. 5,000 or to arrange for the price marking and disposal of textiles already landed of the estimated value of about Rs. 70,000. The respondent abovenamed has wrongfully and unlawfully instructed the Principal Collector of Customs, Colombo, even before the aforesaid order of revocation was served on me, not to allow me to clear textiles which have been imported and landed in the port of Colombo.

9. I, the petitioner humbly submit :—

(*a*) that allegations made by the respondent against me are untrue in substance and in fact ;

(*b*) that I have not been afforded an opportunity of establishing at an inquiry that the said allegations against me are untrue in substance and in fact ;

(*c*) that during that last twenty months I have surrendered to the Textile Coupon Bank over 80,000 textile coupons, and the alleged shortage is in respect of only two items of surrender aggregating to 7,000 points of textiles coupons which I the petitioner had sent for surrender to the Textile Coupon Bank.

(*d*) that the said allegations disclose criminal offences of a very grave nature, like forgery, which the respondent abovenamed had no jurisdiction to determine, with or without an inquiry under cover of Regulations 62 of the Defence (Control of Textiles) Regulations 1945 ;

(*e*) that the respondent in revoking my licence was not exercising jurisdiction *bona fide* under Regulation 62 aforesaid for the reasons abovenamed ;

(*f*) that the respondent abovenamed is in the circumstances referred to above, an interested person and had therefore no jurisdiction to act under Regulation 62 aforesaid,

(The foregoing affidavit having been duly read over and interpreted to the affirmant in Tamil his own language by me and he appearing to understand the contents thereof wrote his signature thereto and affirmed to the truth and correctness thereof at Colombo on this 12th day of March, 1947.)

Before me :

Sgd. L. H. DE KRETSER,
Commissioner for Oaths.

S. MOHAMED HUSSAIN & Co.,
Sgd. NAKKUDA ALI,
Partner.

A 1 **(Annexure A 1)**

Control of Textiles Office,
P. O. Box No. 538, Colombo.
My No. Cr. C. 1873/4369 of 20th February, 1947.

MESSRS. S. MOHAMED HUSSAIN & CO.,
No. 109/111, Keyzer Street,
Colombo.

Under the Powers vested in me by Regulation 33 of the Defence (Control of Textiles) Regulations, 1945, I hereby prohibit you—

(1) from purchasing any regulated textiles without the previous written authority of the Assistant Controller of Textiles, Colombo Town.

(2) from selling or supplying any regulated textiles to any person in retail except in the immediate presence of one of my officers ; and

(3) from selling or supplying any regulated textiles in wholesale to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town.

2. This prohibition will be valid for two weeks from today.

Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles.

Served by me personally, 12 a.m., 22-2-47 :
Sgd. (illegibly),
Asst. Controller, Colombo.
22-2-47.

No 1. Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47 —*continued.*

(Annexure B)

Control of Textiles Office.
P. O. Box No. 538, Colombo.
My No. CR. C. 1873/4369 of 22nd February, 1947.

MESSRS. S. MOHAMED HUSSAIN & Co.,
No. 109/111, Keyzer Street,
Pettah.

Gentlemen,

An examination of your account in the Coupon Bank and the supporting documents and registers have revealed the following irregularities :—

(1) Whereas according to the scroll book kept by the counter clerk who receives coupons from depositors, and according to the registers kept by the shroff and the Assistant Controller respectively, the number of coupon points surrendered by you on the undermentioned dates were as shown in column (2) below, your ledger account, however, has been credited on the same dates with accounts shown in column (3).

(1) Dates	(2) Points surrendered according to registers kept by Counter Clerk, Shroff and Assistant Controller	(3) Points credited in your Ledger Account
On 30-11-46	669 points	5,669 points
On 21-12-46	992 ,,	2,992 ,,

(2) On inspecting the corresponding paying-in slips submitted by you along with the coupons, it is found that interpolations have been made on these slips (on foils and counterfoils both) in figures as well as letters so as to show the bigger amounts as credited in the Ledger accounts. Both the interpolations and the original entries appear to be in the same handwriting.

(3) I have reason to believe that you got these interpolations made with the object of obtaining in your Ledger account credit for a larger amount than the amount you were entitled to on the coupons you actually surrendered.

2. If you have any explanation to offer in respect of these matters please send it in to me in writing on or before 4 p.m. on Tuesday, the 25th instant.

3. If you desire to see the documents referred to above, you may do so at this office at any time during office hours on application to my Office Assistant.

I am, Gentlemen,
Your obedient Servant,
Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles.

Served by me personally :
Sgd. (Illegibly),
Asst. Controller, Colombo.
22-2-47—12 a.m.

(Annexure C)

No. 1 Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47 —*continued.*

Please reply to—
211, Hulftsdorp Street.
Colombo, 25th February, 1947.

THE CONTROLLER OF TEXTILES,
Controller of Textiles Office,
Colombo.

Messrs. S. Mohamed Hussain & Co., Licence No. 1873/C1873

SIR,

Your letter No. CR/C 1873/4369 dated 22nd February, 1947, addressed to Messrs. S. Mohamed Hussain & Co., No. 109, 11, Keyzer Street, Pettah, has been submitted to me for reply and steps.

I have been instructed to submit the following by way of explanation in regard to the matter referred to therein.

On 30-11-46 my client surrendered 5,669 points and entered up the paying in slips in foils and counterfoils, similarly on 21-12-46 he surrendered 2,992 points and entered up the paying in slips in foils and counterfoils. They were entered up in the handwriting of my client (the proprietor, Mr. Nakkuda Ali). Invariably when the paying in slips are handed over to Coupon Bank, the signature of my client's employee, namely M. O. Aliyar is written in the slips. There were no interpolations when he wrote the paying in slips and sent them to the Coupon Bank.

Apparently what has happened is that someone else has destroyed these two paying in slips and written out two fresh ones for lesser amounts, namely 669 points on 30-11-46 and 992 points on 21-12-46 and subsequently interpolated the 5,000 and 2,000 respectively on the said dates.

My client nor any office employees of his is responsible for the writing of these fresh paying in slips which contained interpolations. They are not in the handwriting of my client nor any of his employees. It is noteworthy that the interpolation slips do not contain the signature of my client's employee M. O. Aliyar.

When the paying in slips and the Coupons are surrendered, the signature of my client's employee (M. O. Aliyar) is obtained in a book kept by the Bank Clerk at the counter, sometimes the amount is entered and my client's man puts his signature without verifying the actual amount of coupons actually entered. Sometimes the amount is not entered immediately and the actual amount is entered by the clerk subsequently. In these two particular instances one or the other of these things may have happened.

My client instructs me further to say that his Books have been regularly inspected and checked and signed and nothing wrong was found therein.

No. 1 Application of Petitioner for a Mandate in the nature of a Writ of *Certiorari* 12-3-47 —*continued.*

Further he has submitted monthly statements dated 2-12-46, -6-1-47 and 5-2-47 to the Assistant Controller and up to date there has been no question with regard to the correctness of such statements.

My client submits that you will be pleased to take this explanation along with the further submissions that his Counsel has made to you and that you will be pleased to withdraw the prohibition that has been made against the firm.

Yours faithfully,
Sgd. A. C. M. A. CADER,
Proctor for Petitioner.

(Annexure D)

Control of Textiles Office,
P. O. Box 538, Colombo,
My No. CR. C 1873/4369 of 10-3-47.

MESSRS. S. MOHAMED HUSSAIN & Co.,
No. 109/111, Keyzer Street,
Pettah.

Sirs,

With reference to my letter No. CR. C. 1873/4369 of 22-2-47 and the letter of 25-2-47 submitted by your lawyer, I find you are a person unfit to hold a textile licence. I therefore order the revocation of your licence, under Regulation 62 with effect from 10-3-47.

2. Please hand over to my officer your Licence, Identity Card, Coupon Issue Card, Coupon Account Register and any coupons you may have in your possession.

3. You are also informed that you can keep any of your own stocks in your possession for 15 days after the date of revocation. Meanwhile, if you can make suitable arrangements to deliver the goods to another dealer, on such terms as you like, I shall sanction the transfer before that date on condition that :

(1) You surrender the remaining coupons in your hand and the coupons you obtain by the sales with my sanction ;

(2) The transferee surrenders the coupons for the goods transferred. Possession of the goods after 15 days will be regarded as unlicensed possession, and the goods will be seized and a prosecution entered.

I am, Sirs,
Your obedient Servant,
Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles.

Sgd. H. JINADASA,
Deputy Controller.

No. 2.

No. 2
Order of the Supreme Court
21-3-47

Order of the Supreme Court.

Application No. 115

SUPREME COURT MINUTE PAPER ON APPLICATIONS

Subject : Mandate in the nature of a Writ of *Certiorari* on the Textile Controller.

Date : 19-3-47.

Listed before the HONOURABLE MR. E. A. L. WIJEYEWARDENE, K.C., Puisne Justice.

MR. ADVOCATE H. V. PERERA, K.C., with MR. C. SUNTHERALINGAM for the petitioner.

Order

Date

21-3-47 : Issue notice and direct the respondent not to take any steps on the footing of the order made by him until this inquiry is completed by this Court.

Sgd. C. TOUSSAINT,
Bench Clerk.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

NAKKUDA ALI of S. Mohamed Hussain & Co. of No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company...*Petitioner.*

S. C. Appln. No. 115. *vs.*

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations), 106, Havelock Road, Colombo ..... *Respondent.*

To the abovenamed Respondent.

Take notice that upon reading the petition and affidavit of the above-named petitioner (copy annexed) and on the motion of Mr. H. V. Perera, K.C., with Mr. C. Suntheralingam, Advocates, praying for a Writ of *Certiorari* on you, you are hereby required to shew cause if any to the

No. 2 Order of the Supreme Court 21-3-47 —*continued.*

Supreme Court at Colombo on 28th March, 1947, at 11 a.m. or so soon thereafter as may be convenient to this Court, why the application should not be allowed.

By Order of Court,
Sgd. F. C. VAN CUYLENBURG,
for Registrar, S. C. 21-3-47.

No. 3 Affidavit of Respondent 25-7-47

No. 3.

Affidavit of Respondent

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an application for a Mandate in the nature of a Writ of *Certiorari* under section 42 of the Courts Ordinance (Cap. 6).

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company...*Petitioner.*

No. 115. *vs.*

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations, 106, Havelock Road, Colombo ..... *Respondent.*

I, MERENNA FRANCIS DE SILVA JAYARATNE of Colombo do hereby solemnly, sincerely and truly affirm and declare as follows :—

1. I am the Controller of Textiles appointed under the Defence (Control of Textiles) Regulations and the respondent in the above proceedings.

2. Upon an application dated the 6th July, 1943, made by the petitioner, he was licensed by the Controller of Textiles to carry on business in textiles at No. 109 and 111, Keyzer Street, Pettah, in Colombo under licence No. 1873/C-1873.

3. On or about the 25th day of January, 1947, in the course of checking of the ledger account at my office relating to textiles coupons surrendered by licensed dealers it was found that a certain dealer's ledger account was credited with a larger number of coupons than the amount recorded as having been surrendered according to the registers kept by the Receiving Clerks and Shroff, and the Chief Clerk of the Coupon Bank,

As there was reason to suspect that similar discrepancies pointing to fraudulent credit entries might be found in other accounts as well, I immediately ordered the account of certain other dealers also to be checked up. The petitioner's account was verified in this manner, and the discrepancies that were discovered are now fully set out in paragraph 6 thereof.

4. The procedure adopted at the said Coupon Bank of my department is as follows :—

(*a*) The Coupon Bank maintains a ledger account for every licensed textile importer in the Island and every such dealer's account is debited with the coupon point value of the textiles imported by him. The dealer is required by the Textile Control Regulations to surrender to me coupons he acquires by the sale of these textiles. When the dealer surrenders his coupons his ledger account is credited with the amount so surrendered.

(*b*) The dealer surrenders the coupons by bringing the coupons to the Coupon Bank with his paying-in book which is supplied by me. The requisite entries in the paying-in slip are made by him and tendered by him together with the coupons.

(*c*) The officer of my department who receives the coupons at the counter and who is called the receiving clerk counts the coupons and after satisfying himself that the number of points surrendered is correctly set out in the paying-in slip in both foil and counterfoil he enters in the scroll book the number of the points so received and obtains the depositor's signature or initials to the said entry in the scroll book. The said scroll book has been maintained since September, 1946.

(*d*) The paying-in slip in both foil and counterfoil together with the coupons are thereafter passed on by the receiving clerk to the assistant shroff who in turn checks the correctness of the number of coupons and of the particulars in the paying-in slip, initials the paying-in slip and passes the paying-in slip to the shroff. The assistant shroff until the introduction of the scroll book at the counter of the receiving clerk, maintained a register in which he entered the date, licence number of the dealer and the number of coupons deposited.

(*e*) The shroff records in a register kept by him the amount of the points as appearing in the foil and counterfoil of the paying-in slip and after affixing his signature to foil and initialling the counterfoil passes them to the Chief Clerk of the Coupon Bank who countersigns the paying-in slip, both foil and counterfoil and records in a register kept by him called the credit control book the number of the points appearing in the slip. Thereafter the Chief Clerk detaches the foil of the paying-in slip and the paying-in book with the counterfoil is returned to the dealer.

(*f*) The foil of the paying-in slip is thereafter passed on to the ledger clerk who enters up the ledger account of the dealer.

No. 8
Affidavit of Respondent
25-7-47
—*continued.*

5. Under the above procedure the number of coupon points surrendered at the Coupon Bank are entered in turn in the following official records :—

(*a*) by the Assistant Shroff in the register maintained by him until the scroll book was introduced ;

(*b*) by the receiving clerk at the counter in his scroll book ;

(*c*) by the Shroff in his register ;

(*d*) by the Chief Clerk in his credit control book ; and

(*e*) lastly, by the ledger-keeper in the ledger.

6. According to my investigations the coupon points surrendered according to the records referred to in paragraph 5 (*a*), (*b*), (*c*) and (*d*) above are considerably less than the points entered to the credit of the petitioner in the ledger account. The extent of the discrepancies is as follows :—

(1)	(2)	(3)
Dates	Points surrendered according to registers kept by Asst. Shroff, Receiving Clerk Shroff and Chief Clerk	Points credited in Petitioner's Ledger Account
30-11-46	669	5669
21-12-46	992	2992

7. I authorised an Inspector of my Department to obtain the relative counterfoils from the petitioner and an examination of the two foils and counterfoils disclosed to me that certain interpolations had been inserted in both the foils and counterfoils which had the effect of increasing the amount of coupon points surrendered from the number set out in column 2 of paragraph 6 above to the respective number in column 3 thereof.

8. I annex hereto marked " A ", " B ", " C " and " D " affidavits of Kuruppu Appuhamilage David Perera, Stephen Gomis Abeysinghe Jayawardena, Sepala Rajapakse and Eric Claude Rajapakse, respectively, the Shroff, Chief Assistant Shroff and two of the Receiving Clerks of the Textile Coupon in which they confirm that the entries by them in the scroll book and registers correctly set out the number of coupon points which accompanied such paying-in slips.

9. I annex hereto marked " E " a true copy of a report dated the 6th February, 1947, of the Government Examiner of Questioned Documents in respect of the foils and counterfoils and referred to in paragraph 7 hereof and I annex marked " F " and " G " photographic enlargements of the said foils and counterfoils.

10. When the discrepancy was detected I deputed an Assistant Controller of Textiles to hold an inquiry and after considering the statements recorded by him and by me among others of S. Mohamed Hussain, Narkhud Alid, Aliyar and the further written explanation offered by the

petitioner as set out in the document marked " D " and referred to in paragraph 6 of his petition, and after hearing Counsel retained by the petitioner to make further representations to me on the subject, I had reasonable grounds to believe that the petitioner was unfit to be allowed to continue as a dealer in textiles and in terms of Regulation 62 of the Defence (Control of Textiles) Regulations, I accordingly cancelled the licence issued to him. In doing so I acted in good faith. I specifically deny that in making the said order I was actuated by any ill-will or malice towards the petitioner.

Signed and affirmed to at Colombo
on this 25th day of July, 1947. Sgd. M. F. DE S. JAYARATNE.

Before me :
Sgd. (Illegible)
A Justice of the Peace.

(Annexure A)

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

I, KURUPPU APPUHAMILAGE DAVID PERERA of Pattalagedara Veyangoda, do hereby solemnly, sincerely and truly affirm and declare as follows :—

1. I was employed by the Textile Control Department as Shroff since 4th February, 1946. I was earlier Assistant Shroff at the Colombo Kachcheri till October, 1942, and later the Shroff at the Vavuniya Kachcheri.

2. I have perused the affidavit of the Textile Controller dated the 25th July, 1947, and affirm that the procedure adopted at the Coupon Bank is as set out in paragraph 4 thereof.

3. The paying-in slips in foil and counterfoil are passed on to me by the Chief Assistant Shroff, I verify that the particulars on both foil and counterfoil tally and thereafter enter the particulars in a register kept by me. After checking the entries in my register I affix the serial numbers on the foil and counterfoil. I initial the counterfoil and sign the foil and pass on both documents to the Chief Clerk who keeps the credit control book.

4. I identify my signature and initials on foil and counterfoil of slip No. 7150.

5. According to the register kept by me the coupon points surrendered are considerably less than the points now appearing in the foil and

No. 3 Affidavit of Respondent 25-7-47 —*continued.*

counterfoil bearing serial No. 7150 and the discrepancies are as set out in paragraph 6 of the affidavit of the Textile Controller dated the 25th July, 1947.

6. I affirm that—

(*a*) the letters "five thousand" and the figure "5" in the number "5,619" in both foil and counterfoil of paying-in slips No. 7150 have been inserted or interpolated since the relative entries as to the number of coupons surrendered were entered by me in the register kept by me.

Signed and affirmed to at Colombo on this Twenty-fifth day of July, 1947. Sgd. K. A. D. PERERA.

Before me :

Sgd. D. B. KANNANGARA,
A Justice of the Peace.

(Annexure B)

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

I, STEPHEN GOMIS ABEYSINGHE JAYAWARDENE of Kadawatte, do hereby solemnly, sincerely and truly affirm and declare as follows :—

1. I was employed by the Textile Control Department since 4th February, 1946, as Assistant Shroff and was appointed Chief Assistant Shroff in or about March, 1946.

2. The procedure until about August, 1946, was for the receiving clerks to pass on the coupons and the paying-in slip to me for verification and upon my counting the coupons and verifying the correctness of the entries in both foil and counterfoil for me to pass them on to the Shroff. I have at all times followed this procedure.

3. Since August, 1946, I was instructed after counting and verification to affix my initials to both foil and counterfoil.

4. I have perused the affidavit of the Textile Controller dated the 25th day of July, 1947, and affirm that the procedure adopted at the Coupon Bank is as set out in paragraph 4 thereof.

5. I identify my initials on the foil and counterfoil of slips Nos. 7150 and 7415.

I would not have affixed my initials unless the particulars were correct according to the number of coupons surrendered and counted by

me. I also identify my signatures and initials to the foil and counterfoil of paying-in slip No. 7415 of 21st December, 1946 on which date I have acted for the Shroff.

6. I have entered the number of coupon points surrendered by the petitioner under paying-in slip No. 7415 in the Shroff's Register. The entry shows that 992 coupons were surrendered whereas the relative foil and counterfoil now show the amount as 2992.

7. I affirm that—

(*a*) the letters " five thousand " the figure 5 in the number " 5669 " in both foil and counterfoil of paying-in slip No. 7150, and

(*b*) the letters " two thousand " and the first figure " 2 " in the number 2992 in both foil and counterfoil of paying-in slip No. 7415 have been inserted or interpolated since I counted the coupons surrendered checked the paying-in slip initialled and signed them and further made the relative entry in the Shroff's register in respect of paying-in slip No. 7150.

Signed and affirmed to at Colombo
on this Twenty-fifth day of July, 1947

Sgd. S. G. A. JAYAWARDENA.

Before me :

Sgd. D. B. KANNANGARA,
A Justice of the Peace.

(Annexure C.)

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

I, SEPALA RAJAPAKSE of 159, Ketawalamulla Road, Maradana, Colombo, do hereby solemnly, sincerely and truly affirm and declare as follows :—

1. I am a Receiving Clerk at the Coupon Bank of the Textile Control Department and have been so employed since the 4th February, 1946.

2. I have perused the affidavit dated the 25th day of July, 1947, of the Textile Controller and affirm to the correctness of the procedure that is followed by the Coupon Bank as is set out in paragraph 4 thereof.

3. Until the introduction of a record book called the Scroll Book at the counter my duties as receiving clerk were :—

(*a*) to count the coupons surrendered by a dealer ;

No. 3
Affidavit of
Respondent
25-7-47
—*continued.*

(*b*) to check the particulars entered in the foil and counterfoil of the pay-in slip ; and

(*c*) thereafter, if correct, to pass the coupons and the paying-in slip both foil and counterfoil to the Assistant Shroff.

4. Since September, 1946, the keeping of a Scroll Book by the receiving clerks at the counter was introduced, and thereafter my duties as receiving clerk are :

(*a*) to count the coupons surrendered by a dealer ;

(*b*) to check the particulars entered in the foil and counterfoil ;

(*c*) to enter the following particulars in the Scroll Book :— 10

(i) the date ;

(ii) the licence number of the dealer ;

(iii) the dealer's name ;

(iv) the number of coupons surrendered ;

(v) receiving clerk's signature ;

(vi) surrenderer's signature or initials.

(*d*) after making the above entries to sign the counterfoil of the paying-in slips, and to pass the coupons and the paying-in slips, both foil and counterfoil to the Assistant Shroff.

7. I affirm that the relative entries made in the Scroll Book as on 20 the 30th November, 1946, in which it has been entered that Messrs. S. M. Hussain & Co. paid in 669 coupon points are in my handwriting. I identify my signature in the Scroll Book and affirm that the depositor's initials in the Scroll Book were affixed in my presence after all entries had been made by me. I also identify my signature on the counterfoil of the paying-in slip bearing No. 7150.

8. I further affirm that the particulars entered by me in the Scroll Book correctly set out the number of coupons surrendered by a representative of the dealer on the 30th November, 1946.

9. The letters " five thousand " and the figure " 5 " in the number 30 " 5669 " on both foil and counterfoil of paying-in slip No. 7150 have been interpolated since the entries were made by me in the Scroll Book and signed by both me and the depositor.

Signed and affirmed to at Colombo
on this Twenty-fifth day of July, 1947.

Signed. SEPALA RAJAPAKSE.

Before me :

Sgd. D. B. KANNANGARA,
A Justice of the Peace.

(Annexure D.)

No. 3
Affidavit of
Respondent
25-7-47
— *continued.*

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

I, ERIC CLAUDE RAJAPAKSE of Bopeththa, Urapola, do hereby solemnly, sincerely and truly affirm and declare as follows :—

1. I was a Receiving Clerk at the Coupon Bank of the Textile Control Department and was so employed since the 4th February, 1946, up to 21st June, 1947.

2. I have perused the affidavit dated the 25th day of July, 1947, of the Textile Controller and affirm to the correctness of the procedure that is followed by the Coupon Bank as is set out in paragraph 4 thereof.

3. Until the introduction, of a record book called the Scroll Book at the counter my duties as receiving clerk were :

(*a*) to count the coupons surrendered by a dealer ;

(*b*) to check the particulars entered in the foil and counterfoil of the paying-in slip ; and

(*c*) thereafter, if correct, to pass the coupons and the paying-in slip both foil and counterfoil to the Assistant Shroff.

4. Since September, 1946, the keeping of a Scroll Book by the receiving clerks at the counter was introduced, and thereafter my duties as receiving clerk are :

(*a*) to count the coupons surrendered by a dealer ;

(*b*) to check the particulars entered in the foil and counterfoil of the paying-in slip ;

(*c*) to enter the following particulars in the Scroll Book :—

(i) the date ;

(ii) the licence number of the dealer ;

(iii) the dealer's name ;

(iv) the number of coupons surrendered ;

(v) receiving clerk's signature ;

(vi) surrenderer's signature or initials.

(*d*) after making the above entries to sign the counterfoil of the pay-in slip and to pass the coupons and the paying-in slip both foil and counterfoil to the Assistant Shroff.

6. I affirm that the relative entries made in the Scroll Book as on the 21st December, 1946, in which it has been entered that Messrs. S. M. Hussain & Co. have paid in 992 coupon points are in my handwriting. I identify my signature in the Scroll Book and affirm that the depositor's initials in the Scroll Book were affirmed in my presence after all entries had been made by me. I also identify my signature on the counterfoil of the paying-in slip bearing No. 7415.

No. 8 Affidavit of Respondent 25-7-47 —*continued.*

7. I further affirm that the particulars entered by me in the Scroll Book correctly set out the number of coupons surrendered by a representative of the dealer on the 21st December, 1946.

8. The letters " two thousand " and the first figure " 2 " in the number " 2992 " in both foil and counterfoil of paying-in slip No. 7415 have been interpolated since the coupons were surrendered to me and since the entries were made by me in the Scroll Book and signed by both me and the depositor.

Signed and affirmed to at Colombo on this Twenty-sixth day of July, 1947.

Sgd. E. C. RAJAPAKSE.

Before me :

Sgd. D. B. KANNANGARA,
A Justice of the Peace.

(Annexure E.)

Report No. 38 (H-59/46),
Office of the Government Analyst.,
Colombo, 2nd February, 1947.

The Controller of Textiles sent me on 21-2-47 through Mr. K. Mahendra, A. C. T., two paying-in slips of counterfoils of S. M. Hussain & Co., Nos. 7150 of 30-11-46 and 7415 of 21-12-46.

No. 7150 of 30-11-46

In the counterfoils the line drawn across the blank space below S. M. Hussain & Co. has been partly erased and the words " Five thousand" have been written over it. The slope and size of the letters in " Five Thousand " are different to those in " Six hundred and sixty-nine ". In the total the dash of " 5 " lies on top of " 6 ".

No. 7415 of 21-12-46.

Nothing definite to indicate additions.

Sgd. T. NAGANDRAM,
Government Examiner of Questioned Documents.

THE TEXTILE CONTROLLER,
Colombo.

ASST. CONTROLLER O
(DISTRIBUTION
Textile Control
30 NOV.

A/c. No. *C187* COLOMBO

For Credit of *S. M. H*

Five thousand Six hun
nine

Particulars	
Consumer Coupons	*5619*
Special ,,	*50*
Coupon Equivalent Documents	*1*
Total	*5669*

ASST. CONTROLLER OF T
(DISTRIBUTION OF
Textile Control
21 DEC. 19

A/c. No. *C187*. COLOMBO. Date,

For Credit of *S. M. Hus*

Two thousand nine hundre
two only

Particulars	
Consumer Coupons	*2992*
Special ,	—
Coupon Equivalent Documents	—
Total	*2992*

Si
R

In

Si
S

(Annexure G.)

7415

Credit Form.

Textile Control Department

A/c. No. *C-1873* Date, *21-12-1946.*

Paid in to Credit of *S. M. Hussein & Co.*

Two thousand nine hundred & ninty two only Coupons.

Particulars			
Consumer Coupons	*2992*	*Actg. Shroff*	Signed Illegibly
Special ,,	—		*By* MR. ALIYAR,
Coupon Equivalent Documents	—	*Ledger Clerk*	Initialled Illegibly
Total	*2992*	*Folio 387*	Signed Illegibly *Staff Assistant*

7415
EXTILES
redit) Form.
46
21-12-1946.
ein & Co.
& ninty
Coupons.
ied Illegibly
eiving Clerk
ialled Illegibly
Actg. Shroff
ed Illegibly
ff Assistant

No. 4
Order of the Supreme Court
8-10-47

No. 4.

Order of the Supreme Court.

Application for a Writ of Certiorari on the Controller of Textiles (115).

Present : CANEKERATNE, J.

Argued on : 26th September, 1947

Counsel : H. V. PERERA, K.C., with C. SUNTHERELINGAM, in support.
WALTER JAYAWARDENE, Crown Counsel, for the respondent.

Delivered on : 8th October, 1947

CANEKERATNE, J.

This is an application by the petitioner for a mandate in the nature of a Writ of Certiorari quashing the order made by the respondent by his letter dated March 10, 1947.

The petitioner is a partner of the firm of S. Mohamed Hussain & Co. which carried on business as textile dealers in the Pettah, Colombo, the other partner being Mohammed Hussain.

The firm of S. Mohamed Hussain & Co.—and I will call them the firm—sent to the Office of the Controller certain textile coupons on two occasions for the purpose of surrendering them to the Coupon Bank. According to the petitioner these coupons were taken by his employee one Alliyar, with a paying-in slip consisting of foil and counterfoil. It appears, according to the affidavit of the respondent, that the firm was supplied with a paying-in book containing slips and that coupons are brought to the office with the book. The slip and the coupons were handed to a receiving clerk by Alliyar on November 30, 1946 : this clerk counted the coupons and checked the number handed with that entered in the paying-in slip ; he then entered the number in a scroll book with various other particulars and obtained the signature of the depositor to the book. After this he passed on the paying-in slip together with the coupons to the Assistant Shroff. The latter checked the number of the coupons, passed the paying-in slip, foil and counterfoil to the Shroff. The Shroff entered in a register the number of points as they appear in the paying-in slip, signed foil and initialled counterfoil to both of which he affixed the serial number 7150 : he passed them to the Chief Clerk. According to the affidavits of the receiving clerk and the Shroff the amount of coupons surrendered by the firm on this day was 669. On December 21, 1946, further coupons were surrendered by the firm amounting, according to the receiving clerk and Shroff, to 992 : the same procedure was followed by them as on the first occasion : the foil contains the signature of the officiating Shroff and of M. Alliyar, the initials of the Ledger Clerk and a

No. 4
Order of the Supreme Court 8-10-47
—*continued*

Staff Assistant; the counterfoil the signature of the receiving clerk, initials of Shroff and of Staff Assistant. The serial number affixed to this was 7415. The signature and the initials of the officers appear on the foil and counterfoil in 7150 too. The Staff Assistant is perhaps the Chief Clerk. The Chief Clerk, according to the affidavit of the Controller, countersigns the paying-in slip, detaches the foil of it which he passes to the Ledger Clerk and at the same time returns the book and counterfoil to the dealer; the Ledger Clerk enters in the dealer's ledger account as a credit the number of points appearing in the foil. The number of points that was entered in the firm's ledger account on the first occasion was 5669, on the second occasion 2992 and the foils and counterfoils now produced contain the amounts (in letters and figures) 5669 and 2992 coupons respectively.

The contentions advanced on behalf of the petitioner were that the Controller when he sent the notice dated February 22, 1946, took the view that he was an officer performing administrative duties, alternatively that he did not inform the firm the reasons on which he acted, or the grounds on which he proceeded to act and thus no opportunity was given to the firm to meet the case. The contentions on the other side were these; the person who was responsible for taking the *prima facie* view on February 22, was different from the one who made the order that was canvassed in the case of *Abdul Thassim vs. Rodrigo* (1947) 48 N. L. R. 121, that officer had himself stated in the course of that order that he was performing administrative functions; the Controller was not acting on suspicion, he had not failed to give an opportunity to the firm to meet the charge, it was for the petitioner to show that there were facts—if such there be—which were not disclosed to him, this the petitioner has failed to allege, the firm was given an opportunity of examining the books and meeting all the evidence upon which the Controller acted.

By a notice sent by the Controller dated February 20, 1947, but served, according to the note on the notice (marked A1 in the petitioner's affidavit): at 12 a.m. on February 22, the firm was prohibited from purchasing or selling any regulated textiles from or to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town—the prohibition to be valid for two weeks.

On February 22, 1947, the Controller sent a notice (letter marked B in the petitioner's affidavit) to the firm, it was served on the firm according to the note, at 12 a.m. on February 22. The letter gives information to the firm (*a*) that the number of coupon points surrendered by the firm on November 30, 1946, was 669, on December 21, 1946, was 992; (*b*) that the office books kept by the receiving clerk, the Assistant Controller and the Shroff show that these were the amounts received on the two dates; (*c*) that interpolations have been made in the slips (the foils and counterfoils) in figures as well as letters so as to show that in one case 5669 points were surrendered, in the other 2992 points; (*d*) that the interpolations and the original entries appear to be in the same handwriting; (*e*) that the amounts credited in the ledger account of the firm were 5669 and 2992

points respectively, whereas the amounts that should have been entered ought to be 669 and 992 respectively. The letter proceeds thus :

" I have reason to believe that you got these interpolations made with the object of obtaining in your ledger account credit for a larger amount than the amount you were entitled to on the coupons you actually surrendered.

" 2. If you have any explanation to offer in respect of these matters, please send it in to me in writing on or before 4 p.m. on Tuesday, the 25th instant.

" 3. If you desire to see the documents referred to above, you may do so at this office at any time during office hours on application to my Office Assistant."

It appears that the firm after receipt of the two letters sent Counsel to interview the Controller. It also appears that at some time probably before February 22, S. Mohamed Hussain, Markhud Ali, and Alliyar made statements to the Assistant Controller or to the Controller. The firm by its lawyer sent a reply (letter dated February 25, 1947, marked C); It stated that Nakkuda Ali, on the first-mentioned date surrendered 5669 points and entered up the paying-in slip in foil and counterfoil, on the second mentioned date he surrendered 2992 points and entered up the paying-in slip in foil and counterfoil. They were entered in the handwriting of "my client, the proprietor, Mr. Nakkuda Ali. Invariably when the paying-in slips are handed over to the Coupon Bank, the signature of my client's employee namely M. O. Alliyar is written in the slips. There were no interpolations when he wrote the paying-in slips and sent them to the Coupon Bank.

"Apparently what has happened is that someone else has destroyed these two paying-in slips and written out two fresh ones for lesser amounts namely 669 points on 30-11-46 and 992 points on 21-12-46 and subsequently interpolated the 5000 and 2000 respectively on the said dates.

" My client nor any office employee of his is responsible for the writing of these fresh paying-in slips which contained interpolations. They are not in the handwriting of my client nor any of his employees. It is noteworthy that the interpolations slips do not contain the signature of my client's employee M. O. Aliyar.

" When the paying-in slips and the coupons are surrendered, the signature of my client's employee (M. O. Aliyar) is obtained in a book kept by the Bank clerk at the counter, sometimes the amount is entered and my client's man puts his signature without verifying the actual amount of coupons actually entered. Sometimes the amount is not entered immediately and the actual amount is entered by the clerk subsequently. In these two particular instances one or the other of these things may have happened."

Certain English authorities were referred to at the argument, also the decision of My Lord the Chief Justice in *In re Application No.* 75, (decided on 19th September, 1947). It was not disputed that the facts of the last case

No. 4 Order of the Supreme Court 8-10-47 —*continued.*

and of the present were not similar and that there was a distinction. Mr. Perera contended that the decision applies to the present case : Mr. Jayawardene the contrary. The question is, how thin is the line dividing the realms of the two—is it so thin as to reach the vanishing point or is it so marked as to create a well defined distinction. The respondent in both cases was the same, in both cases a larger number of coupons than the amount recorded as having been surrendered according to the registers kept by the receiving clerks, the Shroff and the Chief Clerk of the Coupon Bank was entered in the ledger account of the dealers. One of the impeached transactions in both cases is alleged to have happened on the same date. There the similarity ends.

Perusal of the foils and counterfoils suggests that interpolations have been made. It appears on an examination of the counterfoil of 7150 that a line drawn across the blank space below " S. M. Hussain & Co." has been partly erased and the words " five thousand " have been written over it and that the slope and size of the letters in five thousand are different to those in " Six hundred and sixty-nine ". On March 10, 1947, the Controller sent the notice (marked D) to the firm. It states that the respondent finds the firm a person unfit to hold a textile licence. " I therefore order the revocation of your licence, under Regulation 62, with effect from 10-3-47.

" 2. Please hand over to my officer your Licence, Identity Card, Coupon Issue Card, Coupon Account Register and any coupons you may have in your possession.

" 3. You are also informed that you can keep any of your own stocks in your possession for 15 days after the date of revocation. Meanwhile, if you can make suitable arrangements to deliver the goods to another dealer, on such terms as you like, I shall sanction the transfer before that date on condition that :

1. You surrender the remaining coupons in your hand and the coupons you obtain by the sales with my sanction ;

2. The transferee surrenders the coupons for the goods transferred. Possession of the goods after 15 days will be regarded as unlicensed possession, and the goods will be seized and a prosecution entered."

Regulation 62 is as follows :—" 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."

Information was given to the firm as to what the books at the office revealed in respect of the delivery of coupons on the two occasions, as to the condition of the pay-in slips and as to the addition of 7000 coupons to their ledger account. The firm was informed what documents induced

the Controller to form a *prima facie* view and that they were available for inspection and examination. One of the main questions the respondent had to decide was, did the firm surrender to the Coupon Bank 5669 coupons on November 30, 1946, and 2992 coupons on December 21, 1946. There was the entry in the scroll book kept by Sepala Rajapakse and in the register kept by K. A. D. Perera as regards the delivery on the former date, the entry in the scroll book kept by C. E. Rajapakse and in the register kept by Jayawardene as regards the later delivery : statements made by these persons corroborating the entries in the books would also be before the Controller. On the other hand were the statements made by the petitioner, Mohamed Hussain and Alliyar. The respondent had these two versions before him at the time of the making of the order. He had also the signature of Alliyar to the scroll book on both occasions, the signature of Alliyar to the two foils (7150 and 7415) and the books in the office (the register kept by the Chief Clerk too). It is not surprising that the respondent did come to the conclusion that there was no delivery of 5669 coupons or 2992 coupons. He was entitled to believe one version in preference to the other. The other question the respondent had to decide was, did the firm get the interpolations made ? He had the statements made by the petitioner, his co-partner and Alliyar, also the explanation given in letter C ; on the other hand he had the documents already mentioned and the version given by the two Rajapakses, Perera and Jayewardene. There were also the following circumstances :—(1) There was no delivery by the firm of 5669 coupons or of 2992 coupons ; (2) who would benefit by the inaccurate entries in the ledger account—the firm, the Chief Clerk, some one else ? The scarcity of textiles and the readiness with which they can be disposed of at high prices makes dishonesty abnormally profitable. A coupon point, it was asserted at the argument, was a saleable article. On a sale of textiles a dealer must obtain the required number of coupons. If coupons were available at or near a dealer's shop, would-be purchasers of textiles would be considerably helped ; (3) the firm has been credited with an excess of 5,000 coupons on the first occasion and 2,000 on the second ; (4) when the paying-in book was returned the petitioner would see an increase in the number of coupons —for the firm did not send 5669 or 2992 coupons—he would further notice the interpolations in the counterfoil of 7150 and the writing on the other counterfoil. Could the respondent, on a consideration of these matters, and on the versions before him, not reasonably come to the conclusion that the firm got the interpolations made ?

One thing is clear that the decision of the Controller is not impeachable in the Courts on the grounds on which a judicial decision might be impeached. It would be impossible for a person like the petitioner to attempt to get the decision set aside on the ground that the evidence at the inquiry, or the evidence put before the Controller in his quasi-judicial capacity was insufficient to support his decision. It cannot be challenged in the Courts unless he has acted unfairly in the sense of having, while performing quasi-judicial functions, acted in a way which no person performing such functions, in the opinion of the Court, ought to act[a]—unless

No. 4
Order of the Supreme Court 8-10-47
—*continued.*

he breaks a rule laid down by the regulations under which he acts or a rule laid down by the Courts for the behaviour of a quasi-judicial officer, that is, unless he has failed to pay due regard to " the dictates of natural justice ". " Eminent Judges have at times used the phrase " the principles of natural justice ". The phrase is, of course, used in a popular sense and must not be taken to mean that there is any justice natural among men. The truth is that justice is a very elaborate conception; the growth of many centuries of civilization; and even now the conception differs widely in countries usually described as civilised..... The phrase can only mean in this connection the principles of fair play... .....that a provision for an inquiry necessarily imports that the " person charged " should be given his chance of defence and explanation " [1]. There must be due inquiry. The person charged must have notice of what he is accused; he must have an opportunity of being heard. With respect to the charge made, the charge of which the firm had notice—this was not disputed—it is a charge of non-delivery of coupons on two occasions and of getting interpolations made; the particulars of the conduct alleged against it were brought to its attention and it was given an opportunity of sending an explanation and of seeing the documents referred to in letter B. If one sees that the requisite conditions have been fulfilled by the authority which instituted the inquiry, the functions of a Court are at an end. It appears to me that the Court has no power to review the evidence any more than the Court has a power to say whether the authority came to a right conclusion. Passages from the judgment in *Board of Education vs. Rice*[2] and *Arlidge vs. Local Government Board*[3] were read at the argument. It is not amiss to refer to what Lord Greene, M.R. said in a very recent case[4]: " I ought, however, to refer to one matter, because Counsel for the respondent placed great reliance on it, viz., the well known observations of Lord Loreburn, L.C. in *Board of Education vs. Rice.*[2] I shall not read the passage, but it is clear, to my mind, that Lord Loreburn was there dealing with a different type of matter from that which we have to deal here. He was dealing with something which was a *lis* in a much truer sense, because, as he said: " The Board is in the nature of an arbitral tribunal ". Apart from that his observations were not directed to the sort of statute we are dealing with, nor do I think the language which he used is in any way applicable to the consideration of the present case ".

There has been no departure from the rules of " natural justice " in this case and the rule *nisi* must be discharged with costs.

Sgd. A. R. H. CANEKERATNE,
Puisne Justice.

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1. *Maclean vs. The Workers' Union* (1929) 1 ch. 602, pp. 624, 625
2. (1911) A.C. 182
3. (1915) A.C. 120
4. *Johnson & Co., Ltd., vs. Minister of Health.* (1947) 2 A.E.R. 395, p. 405
a. do p. 400

No. 5.

No. 5
Decree of
the Supreme
Court
8-10-47

Decree of the Supreme Court

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, KING, DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6)

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company..*Petitioner.*

S. C. Appln. No. 115/1947 *vs.*

M. F. DE S. JAYARATNE, Controller of Textiles, appointed under the Defence (Control of Textiles) Regulations, 106, Havelock Road, Colombo..... *Respondent.*

RULE ABSOLUTE

This matter coming on for final disposal before the Honourable Mr. A. R. H. Canekeratne, K.C., Puisne Justice, on 26th September, 1947, and on reading the petition and affidavit of the aforesaid petitioner and the affidavit of the respondent and hearing Mr. H. V. Perera, K.C., with Mr. C. Suntheralingam, Advocates for the petitioner, and Mr. Walter Jayawardene, Crown Counsel for the respondent:

It is ordered and decreed that the Rule Nisi issued on the respondent Mr. M. F. de S. Jayaratne, Controller of Textiles, on the 21st day of March, 1947, be and the same is hereby discharged.

And it is further ordered that the petitioner do pay to the respondent the taxed costs of this application.

The 8th day of October, 1947.

Sgd. F. C. VAN CUYLENBURG,
for Registrar, S. C.

No. 6
Application of Petitioner for Conditional Leave to Appeal to the Privy Council
6-11-47

No. 6.

Application of Petitioner for Conditional Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6)

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company...*Petitioner.*

vs.

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations), 106, Havelock Road, Colombo.....*Respondent.*

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company..*Petitioner-Petitioner (Appellant).*

vs.

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations), 106, Havelock Road, Colombo.....*Respondent-Respondent.*

To

THE HON'BLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

The petition of the abovenamed petitioner-petitioner (appellant) states as follows :—

1. Feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 8th day of October, 1947, the petitioner-appellant is desirous of appealing to His Majesty the King in Council.

2. The said judgment is a final judgment and the matter in dispute in the appeal is of the value of over Five thousand Rupees and involves a question respecting civil right of the value of over Five thousand Rupees.

3. The question involved in the appeal is one in which by reason of its general and public importance ought to be submitted to His Majesty the King in Council for decision.

No. 6 Application of Petitioner for Conditional Leave to Appeal to the Privy Council 6-11-47 —*continued.*

4. Notice of the intended application for leave to appeal a copy of which is marked " A " was served on the respondent in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Cap. 85) on the 15th October, 1947, through the Fiscal, Western Province, as per Fiscal report filed of Record through the Fiscal, Western Province, as per Order of Your Lordship's Court dated 13th October, 1947.

Notice of the intended application for leave to appeal also was duly given to the respondent's Proctor on record Mr. Trevor de Saram and the petitioner produces a motion duly signed by Mr. Trevor de Saram marked " B " together with an affidavit of the petitioner in proof of this Notice of the intended application for leave to appeal was also sent by registered post to the respondent and in proof of this the petitioner produces a copy of the Notice sent and the post office receipt marked " C " and " D " respectively.

Wherefore the petitioner prays for Conditional Leave to appeal against the said judgment and decree of this Court dated 8th October, 1947, to His Majesty the King in Council.

Colombo. This 6th day of November, 1947.

Sgd. A. C. M. A. CADER,
Proctor for Petitioner-Petitioner.

No. 7.

No. 7 Decree of the Supreme Court Granting Conditional Leave to Appeal to the Privy Council 5-2-48

Decree of the Supreme Court Granting Conditional Leave to Appeal to the Privy Council.

Application No. 510.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING, DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company..*Petitioner-Petitioner-Appellant.*

Against

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo.....*Respondent-Respondent.*

No. 7 Decree of the Supreme Court Granting Conditional Leave to Appeal to the Privy Council 5-2-48 —*continued.*

No. 115.

In the matter of an application by the Appellant abovenamed for Conditional Leave to Appeal to His Majesty the King in Council against the Decree of this Court dated 8th October, 1947

This matter coming on for hearing and determination on the 5th day of February, 1948, before the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, and the Hon. Mr. E. A. L. Wijeyewardene, K.C., Puisne Justice,of this Court, in the presence of Counsel for the appellant and respondent.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the appellant do within one month from this date :

(1) Deposit with the Registrar of the Supreme Court a sum of Rs. 3000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve :

(2) Deposit in terms of the provisions of section 8 (*a*) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (*b*) and (*c*) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Sir John Curtois Howard, Kt. K.C., Chief Justice, at Colombo, the 5th day of February, in the year of our Lord One thousand Nine hundred and Forty-eight and of our Reign the Twelfth.

Sgd. CLARENCE DE SILVA,
Registrar, S. C.

No. 8 Application of the Petitioner for Final Leave to Appeal to the Privy Council 4-3-48

No. 8.

Application of the Petitioner for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an Application for Leave to Appeal under the provisions of the Appeals (Privy Council) Ordinance (Cap. 85)

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in

partnership with Shabandri Mohamed Hussain under the name style and firm of " S. Mohamed Hussain & Co."....*Petitioner.*

No. 8 Application of the Petitioner for Final Leave to Appeal to the Privy Council 4-3-48 —*continued.*

vs.

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations), 106, Havelock Road, Colombo.....*Respondent.*

S. C. Appln. 115

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain, under the name style and firm of " S. Mohamed Hussain & Co."....*Petitioner-Appellant.*

vs.

M. F. DE S. JAYARATNE, Controller of Textiles appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo.....*Respondent.*

This 4th day of March, 1948.

The humble petition of the petitioner-appellant by his Proctor A. C. M. Abdul Cader showeth as follows :—

1. That the appellant on the 5th day of February, 1948, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 8th day of October, 1947.

2. That the appellant has in compliance with the conditions on which such leave was granted has :

(*a*) On the 4th day of March, 1948, deposited with the Registrar of this Court the sum of Rs. 3,000 being the security for costs of appeal under Rule 3 (*a*) of the Schedule rules and hypothecated the said sum of Rs. 3,000 by bond dated the 4th day of March, 1948, for the due prosecution of the appeal and the payment of all costs that may become payable to the respondent in the event of the petitioner-appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the petitioner-appellant to pay the respondent's costs of appeal ; and

(*b*) on the 4th day of March, 1948, deposited the sum of Rs. 300 in respect of the amounts and fees as required by paragraph 8 (*a*) of the Appellate Procedure (Privy Council) Order 1921 made under section 4 (1) of the aforesaid Ordinance.

No. 8 Application of the Petitioner for Final Leave to Appeal to the Privy Council 4-3-48 —*continued.*

Wherefore the appellant prays that he be granted final leave to appeal against the said judgment of this Court dated the 8th day of October, 1947, to His Majesty the King in Council.

Colombo, 4th March, 1948.

Sgd. A. C. M. A. CADER,
Proctor for Petitioner-Appellant.

No. 9 Decree of the Supreme Court Granting Final Leave to Appeal to the Privy Council 9-3-48

No. 9.

Decree of the Supreme Court Granting Final Leave to Appeal to the Privy Council

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING, DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

NAKKUDA ALI of S. Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain under the name style and firm of S. Mohamed Hussain & Company..*Petitioner. Appellant.*

Against

M. F. DE S. JAYARATNE, Controller of Textiles (appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo.....*Respondent.*

No. 115.

In the matter of an application by the Appellant abovenamed dated 4th March, 1948, for Final Leave to Appeal to His Majesty the King in Council against the Decree of this Court dated 8th October, 1947.

This matter coming on for hearing and determination on the 9th day of March, 1948, before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Puisne Justice, and the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice, of this Court, in the presence of Counsel for the applicant and respondent.

No. 9
Decree of the Supreme Court Granting Final Leave to Appeal to the Privy Council 9-3-48 —*continued.*

The applicant having complied with the conditions imposed on him by the Order of this Court dated 5th February, 1948, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for Final Leave to Appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 9th day of March, in the year of our Lord One thousand Nine hundred and Forty-eight and of our Reign the Twelfth.

10 Sgd. CLARENCE DE SILVA,
Registrar, S.C.

No.....

Supreme Court of Ceylon
Application No. 115 of the year 1947

In His Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon

In the matter of an Application for a Mandate in the nature of a Writ of *Certiorari*.

BETWEEN

NAKKUDA ALI of S Mohamed Hussain & Co., No. 109/111, Keyzer Street, Pettah, Colombo, carrying on business in partnership with Shabandri Mohamed Hussain, under the name style and firm of "S. Mohamed Hussain & Co."..... ***Petitioner-Appellant.***

AND

M. F. DE S. JAYARATNE, Controller of Textiles (Appointed under the Defence (Control of Textiles) Regulations,) 106, Havelock Road, Colombo..... ***Respondent-Respondent.***

RECORD OF PROCEEDINGS

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