

C-41-C-2

18, 1950

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In the Privy Council.

31217 UNIVERSITY OF LONDON  
No. 18 of 1949. W.C. 1.

ON APPEAL FROM THE SUPREME  
COURT OF CEYLON

30MAR1951  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

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

AND

BAPU MIYA MOHAMED MIYA ... ..

UNIVERSITY OF LONDON  
W.C. 1.  
7 JUL 1953  
... APPELLANT  
INSTITUTE OF ADVANCED  
... RESPONDENT LEGAL STUDIES

CASE FOR THE APPELLANT

1.—This is an Appeal from a Decree of the Supreme Court of Ceylon (Sir John Curtois Howard, Chief Justice) dated the 19th September, 1947, which made absolute an Order of the Court dated the 26th February, 1947, requiring the Appellant to show cause why the Court should not issue a mandate in the nature of a Writ of certiorari to quash an Order of which notice was given to the Respondent by a letter dated the 21st February, 1947, from the Appellant to the Respondent. The letter stated that the Appellant found the Respondent unfit to hold a textile licence, revoked two licences held by the Respondent, and required the Respondent to hand over his licence, identity card, coupon issue card, coupon account register and any coupons in his possession. RECORD  
p. 34  
p. 13  
p. 11, l. 28 to p. 12,  
l. 17

2.—The Appellant is the Controller of Textiles duly entrusted with the administration of The Defence (Control of Textiles) Regulations, 1945, which govern the importation, transport, possession, sale and trading in regulated textiles by a system of licensing dealers, fixing maximum prices and issuing of coupons or equivalent documents to be surrendered on the purchase or acquisition of any rationed textile.

3.—The Respondent carries on business under the name of H. A. N. Mohamed & Company, at two addresses in Colombo, and held licences pursuant to the Regulations entitling him to carry on business in textiles at those addresses. p. 2, ll. 12-17;  
p. 14, ll. 19-23

4.—For the purpose of the scheme there is in the Appellant's department a "coupon bank" with a ledger account for every licensed importer p. 14, l. 35 to p. 15,  
l. 5

INSTITUTE OF ADVANCED  
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25, RUSSELL SQUARE.

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of textiles. Whenever a licensed dealer imports regulated textiles his ledger account is debited with their coupon point value; and when the dealer surrenders to the Appellant the coupons which the dealer has received on the sale of the textiles, the dealer's ledger account is credited with the number of coupons surrendered.

p. 15, ll. 6-37

5.—A dealer (which term is used to include a dealer's servants or agents) surrenders coupons by bringing them to the "coupon bank" with a paying-in slip (from a paying-in book supplied by the Appellant) on the foil and counterfoil of which the dealer has inserted the number of coupons which are being surrendered. The receiving clerk (an officer of the Appellant's department) verifies that the number of coupons surrendered is correctly set out on foil and counterfoil, and thereupon enters the number in the scroll book, the entry being verified by the dealer's signature or initials. An assistant shroff then checks the number of coupons again, initials the paying-in slip and passes it to the shroff who records in a register the amount of the coupon points as appearing on foil and counterfoil of the paying-in slip. The shroff signs the foil and initials the counterfoil and passes them to the chief clerk who records the number of coupon points in a register, countersigns foil and counterfoil of the paying-in slip, detaches the foil, returns the paying-in book with the counterfoil to the dealer, and passes the foil to the ledger clerk who credits the number of coupon points to the dealer's ledger account. 10 20

p. 16, ll. 4-14

6.—The Appellant discovered that under date of the 30th November, 1946, the Respondent's ledger account credited him with 21,500 points whereas the records of the receiving clerk, shroff and chief clerk showed that only 1,500 points had been paid in. Under date of the 18th December, 1946, there was also a discrepancy, the ledger showing a credit of 22,000 whereas only 2,000 had been paid in.

p. 16, ll. 15-20

p. 23, ll. 18-24

7.—The relevant counterfoils were obtained from the Respondent. An examination showed that in both foil and counterfoil of the 30th November, 1946, the word "Twenty" had been cramped in before "one thousand" and that "2" had been written in with a terminal stroke lying on top of "1" and written after the "1" was dry. In the counterfoil of the 18th December, 1946, "Twenty" appears cramped and the downstroke of the "y" probably lies on top of the initial stroke of "t" in the following "two." 30

p. 23, ll. 25-28

p. 16, ll. 33-36

p. 27, ll. 29-36

p. 28, ll. 13-15

p. 10, ll. 36-42

8.—On the Appellant's instructions an assistant controller of textiles held an enquiry and took statements from, amongst others, the Respondent and Peter Fernando. Peter Fernando was the Respondent's employee who paid in the coupon points and initialled or signed the documents on the Respondent's behalf. The Respondent alleged that after being questioned by officers of the Appellant's department and by the Respondent, Peter Fernando did not turn up for work and could not be traced. 40

9.—By letter dated the 18th February, 1947, from the Appellant to the Respondent the Appellant stated that he had reason to believe that the Respondent got the interpolations made in the foils and counterfoils and indicated that in the absence of further explanation the Appellant would have to regard the Respondent as a person unfit to hold a licence and proposed accordingly to revoke his licence. p. 9

10.—By his proctor's reply dated the 20th February, 1947, the Respondent denied the allegations, alleged fraud in the Appellant's department, doubted the alteration of the foils and counterfoils or the complicity of the Respondent's employees; alleged that the Respondent paid in coupons to the number shown in the ledger; demanded investigation of the allegations of forgery by a court of law; and suggested that the Appellant was disbarred by interest from acting in the matter. pp. 10-11

11.—By letter of the 21st February, 1947, the Appellant thereupon revoked the Respondent's licence under Reg. 62 which is as follows: p. 11, l. 28

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.

12.—On the 25th February, 1947, the Respondent lodged his petition seeking from the Supreme Court a mandate in the nature of a writ of certiorari quashing the order contained in the Appellant's letter of the 21st February, 1947. On the 26th February, 1947, the Court granted a rule nisi calling upon the Appellant to show cause why the mandate should not be made. pp. 2-4  
p. 12, l. 29—p. 13, l. 31

13.—The Appellant thereupon set out the position in an affidavit supported by affidavits of the persons employed at the material times as shroff, as assistant shroff and as receiving clerks. Each of these persons declared that each foil and counterfoil with which they were respectively concerned had been altered since they had dealt with it. The Appellant also produced the report of the Government Examiner of Questioned Documents. pp. 14-17  
p. 23, l. 11

14.—The following regulations are or may be relevant to the questions raised by this appeal:

#### PART II.

#### *Trading in regulated textiles: and importation, transport, and possession of such Textiles.*

3. The Controller may in his discretion—
- (a) issue a textile licence to any person, and
- (b) authorise any dealer to import regulated textiles into Ceylon.
- 40

4. (1) No person shall carry on business as a dealer of any class unless he is the holder of a textile licence which authorises him to carry on such business and which is for the time being in force.

#### PART VII.

##### *Coupons and rationed Textiles.*

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.

37. (1) For the purpose of determining the number of 10 coupons to be surrendered under Reg. 40 for obtaining any rationed textiles, a value reckoned in points shall be assigned to coupons and rationed textiles. Such value is hereinafter referred to as the "point value."

(2) The point value of any coupon shall be that denoted by the fraction specified on that coupon.

(3) The point value of any rationed textile shall be calculated in accordance with the tables set out in Part III of the Schedule.

38. The appropriate number of coupons in relation to any rationed textile shall be the number of coupons of which the 20 point value is equal to the point value of that textile.

\* \* \* \* \*

40. (1) No dealer other than an indent agent shall, by himself or by any servant or agent, sell or supply any rationed textile to any person unless the appropriate number of coupons is surrendered to that dealer by that person.

\* \* \* \* \*

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 30 obtain any of those textiles from him";

#### PART VIII.

##### *General.*

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 regulations, the dealer shall be deemed to have acted in contravention of those provisions.

\* \* \* \* \*

54A. Every dealer whose textile licence is suspended or 40 cancelled under these regulations shall, forthwith after the date on which the suspension or cancellation of that licence takes

effect, surrender to the Controller that licence and the coupons and coupon equivalent documents acquired by that dealer by the sale or supply of rationed textiles, and shall, if directed by order of the Controller to do so, forthwith produce to the Controller for inspection any such book, register, record, or document kept by that dealer under these regulations as may be specified in that order.

10 55. Any order made by the Controller under or for the purpose of these regulations shall be deemed to have been duly communicated to any person to whom such order is applicable, if it is—

- (a) published in the *Gazette* and in at least one newspaper circulating in Ceylon, or
- (b) issued by letter despatched by registered post to such person at his usual place of business or residence.

Any order issued to any person by letter as hereinbefore provided shall be deemed to have been served on that person at the time at which the letter would have been delivered in the ordinary course of post.

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## PART IX.

*Offences and Punishments.*

57. No person shall be prosecuted for contravening any of these regulations except by, or with the written sanction of, the Controller.

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")—

- 30
- (a) suspend for any period specified in the order, or cancel, any textile licence or all the textile licences issued to that dealer, or
  - (b) require that dealer to pay into the general revenue, within such period and in such manner as may be specified in the order, a sum not exceeding five thousand rupees.

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 notice 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.

(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.

(4) Every appeal under paragraph (3) of this regulation shall—

- (a) be in writing and in triplicate ;
- (b) set out a brief statement of the punitive order against which the appeal is preferred and the reasons urged by the 10 appellants in support of the appeal ; and
- (c) be despatched by registered post, or delivered by hand, to the Controller at his office in Colombo.

(5) No punitive order shall come into force—

- (a) before the expiry of the period within which an appeal against such order may be preferred under paragraph (3) of this regulation, or
- (b) during the pendency of such an appeal.

(6) Where a punitive order is made against any dealer, he shall not be prosecuted for the offence constituted by the 20 contravention in respect of which that order was made.

58A. (1) For the purposes of these regulations, there shall be a Tribunal or two or more Tribunals of Appeal.

(2) A Tribunal of Appeal (hereinafter referred to as "a Tribunal") shall consist of one person or of two or more persons as the Governor may in his discretion determine, and such person or persons shall be appointed by the Governor.

(3) Every person appointed by the Governor under paragraph (2) of this regulation shall, unless he earlier resigns his office or is removed therefrom by the Governor, hold office for 30 such period as the Governor may determine at the time of the appointment, and shall, on vacating the office by effluxion of time, be eligible for reappointment.

(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, and
- (b) such of the appeals preferred to the Tribunal of Appeal established under the Defence (Control of Textiles) (No. 1) Regulations, 1943, as have not been disposed of by that Tribunal prior to the twenty-eighth day of 40 March, 1945.

(5) A Tribunal may—

- 10 (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, and
- (b) in dealing with any appeal referred to in paragraph (4) (b) of this regulation, make any order which the Tribunal of Appeal established under the Defence (Control of Textiles) (No. 1) Regulations, 1943, could have made in accordance with the provisions of those regulations.

(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—

- 20 (a) for a first offence, with a fine of not less than five hundred rupees and not more than five thousand rupees or with imprisonment of either description for a term not exceeding one year or with both such fine and imprisonment, and
- (b) for a subsequent offence committed after conviction of the first offence, with imprisonment of either description for a term not exceeding one year.

30 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.

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.

40 (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.

62. Where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer, the

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Controller may cancel the textile licence or textile licences issued to that dealer.

## PART X.

*Textile Advisory Board and rescissions.*

63. (1) The Minister may constitute a Textile Advisory Board (hereinafter referred to as the "Board") consisting of twelve persons to advise the Controller generally on matters connected with the enforcement of these regulations.

None of the regulations mentioned in Section 58 (1) has any relation to the present case. 10

- pp. 27-33  
p. 30, l. 42 to p. 31,  
l. 3
- p. 31, ll. 3-8
- p. 31, ll. 9-23
- p. 31, ll. 23-40
- p. 31, l. 41 to p. 33,  
l. 20
- p. 33, ll. 23-30
- p. 33, l. 30
- p. 33, ll. 31-41
- p. 34
- 15.—In his reasons for granting to the Respondent the relief for which he prayed, the Chief Justice set out the facts, quoted Reg. 62, and referred to the Respondent's contention that the Appellant had no reasonable grounds for the allegation in his letter of the 18th February, 1947, that the Respondent got the interpolations made and contrived to obtain in the ledger account credit to which he was not entitled. The Chief Justice said that such grounds had not been disclosed so as to give the Respondent an opportunity of meeting them ; that the allegation rests only on suspicion, and that suspicion is not a reasonable ground within the meaning of Reg. 62. The Chief Justice also referred to the argument whether the unwitting employment of a dishonest employee would be a sufficient ground for cancelling the licences, although not the ground upon which the Appellant purported to act. The Chief Justice held that the Court could enquire into the sufficiency of the materials on which the Appellant acted, because the fact that the Appellant can only act when he has reasonable grounds indicates that the Appellant is acting judicially and not merely administratively. 20
- 16.—The Chief Justice then considered whether the Appellant had acted judicially in accordance with the principles laid down by Lord Haldane L.C. in *Local Government Board v. Arlidge* [1915] A.C. 120, under which the tribunal must give the parties a fair opportunity of stating their case. The Chief Justice was of opinion that the grounds upon which the Appellant had come to the conclusion that the Respondent had got the interpolations made and contrived to obtain excessive credit had not been disclosed to the Respondent, and that therefore the Respondent had not been given a fair opportunity of stating his case. The Chief Justice also held that the Appellant condemned the Respondent on mere suspicion. If the grounds were as stated in the letter, the Chief Justice considered that the Appellant had not acted judicially ; whereas if the licences were cancelled because the Respondent employed a dishonest servant, the Appellant had not (the Chief Justice thought) acted judicially because that was not a ground upon which the Appellant purported to act, and the Respondent had no opportunity of dealing with it. Accordingly the Court made the decree now under appeal. 30 40



17.—The Appellant respectfully submits that when the Regulations and the scheme of control thereby established are considered as a whole, it appears that in revoking a licence under Reg. 62 the Appellant is performing an administrative duty which was not intended to be subject in any way to control by the Court. The Appellant respectfully submits that *Abdul Thassim v. Edmund Rodrigo* (48 N. L. R. 121) was wrongly decided. In any event the Appellant is not a person or tribunal to whom Section 42 of the Courts Ordinance applies. The relevant provision of that section is as follows :—

10                   “ 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.”

18.—The Appellant also respectfully submits that if the Appellant in revoking a licence under Reg. 62 was exercising judicial or quasi-judicial functions and was subject to the control of the Court by mandate in the  
20 nature of a writ of certiorari, the circumstances of this case did not warrant the granting of such a mandate. The Appellant was not bound to disclose the weight which, in his own mind, he attached to various pieces of evidence. The Appellant in his letter of the 18th February, 1947, to the Respondent set out the facts. He sent an assistant controller to interview the Respondent, Peter Fernando and other persons and the Appellant had the report of the assistant controller. The Respondent had the fullest opportunity in reply to the letter to make any comment and to give any explanation of the facts alleged which he might desire to make. The  
30 Respondent gave no explanation which explained why his account should have been credited with coupon points which had not been paid in or of the alterations in the foils and counterfoils. Instead the Respondent asserted that he had paid in the full number of coupons credited to him. In these circumstances the Appellant submits that he was fully entitled to regard the Respondent as unfit to hold a textile licence, and that the Appellant made his decision in a manner which satisfied every requirement for the proper exercise of a judicial or quasi-judicial function.

19.—The Appellant submits that on no principle of law can the Supreme Court be entitled to enquire into the materials or sufficiency of materials on which the Appellant reached his conclusion, provided that the  
40 Appellant acted honestly and had been entrusted by the Regulations with the power of cancelling the licence. The Appellant submits that there is nothing in the Regulations which lends any colour to the suggestion that in exercising his powers under Reg. 62 the Appellant was bound to hold a trial, or some such proceeding, to investigate as on the trial of a charge the grounds for considering the Respondent an unfit person to hold a licence. If the Court can take upon itself to say what belief the Appellant

should have come to on the materials before him, the Court is improperly, in the Appellant's submission, turning itself into a court of appeal and is ignoring the practice regarding the circumstances in which the Court will grant a mandate in the nature of a writ of certiorari.

20.—The Appellant also submits that it is quite incorrect to say that the Textile Controller acted merely on suspicion. The Appellant had before him the statements of his own officers supported by their entries in the relevant books kept by them and by the initials or signatures of Peter Fernando, the Respondent's employee, in the scroll book. On the other hand, the Appellant had no explanation other than an allegation 10 that officials in the department were committing a fraud and that the full number of coupons had in fact been paid in. On either view the Respondent's employee was party to the fraud, and no suggestion was made to explain how the crediting of an excessive number of coupon points to the Respondent's ledger account could benefit anyone other than the Respondent. It is therefore submitted that the Appellant so far from acting on mere suspicion was acting on an overwhelming balance of probability.

21.—The Appellant therefore submits that the decree of the Supreme Court of Ceylon, dated the 19th day of September, 1947, should be set 20 aside and that the Respondent's petition should be dismissed with costs for the following, amongst other

### REASONS

1. BECAUSE in revoking the Respondent's licences the Appellant was exercising an administrative function the exercise of which is not subject to the control of the Supreme Court of Ceylon.
2. BECAUSE in any event the Appellant is not a person to whom Section 42 of the Courts Ordinance applies.
3. BECAUSE the Supreme Court was not entitled to enquire 30 into the materials or sufficiency of materials on which the Appellant cancelled the licence.
4. BECAUSE if the Appellant's function was judicial or quasi-judicial the Appellant exercised it on proper principles.
5. BECAUSE the circumstances established ample material upon which the Appellant could form the belief that the Respondent was unfit to be allowed to continue as a dealer, and the Appellant formed such belief on reasonable grounds.

DAVID MAXWELL FYFE.

FRANK GAHAN.

In the Privy Council.

No. 18 of 1949.

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CASE FOR THE APPELLANT

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