

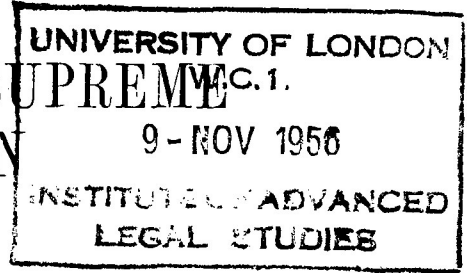
11, 1951

In the Privy Council.

31341

No. 24 of 1950.

ON APPEAL FROM THE SUPREME COURT OF CEYLON



BETWEEN

M. F. DE S. JAYARATNE APPELLANT

AND

M. MOHAMED MIYA RESPONDENT.

CASE FOR THE APPELLANT

RECORD

1.—This is an Appeal from a Decree, dated the 2nd October, 1947, p. 28 of the Supreme Court of Ceylon (Dias, J.), ordering that a rule nisi, dated pp. 12-13 the 26th February, 1947, whereby it was ordered that the Appellant take no further steps on the footing of an order of his dated the 21st February, 1947, pending the hearing and determination of the Respondent's application for a mandate in the nature of a writ of certiorari, be made absolute, the Appellant's said order be quashed, and the Appellant pay to the Respondent the costs of the application.

2.—The Appellant is the Controller of Textiles appointed under Reg. 2 of the Defence (Control of Textiles) Regulations, 1945. The Respondent carries on business, under the name of Cassim Stores, as a textile dealer in Colombo. p. 5, ll. 25-27

3.—The parts of the said Regulations relevant to the questions raised by this Appeal read as follows :

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.

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 point 20 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 obtain any of those 30 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 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.

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—

- 10 (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.

PART IX.

Offences and Punishments.

- 20 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.

4.—The Appellant issued to the Respondent a licence authorising the Respondent to carry on business in textiles. The Respondent is not an indent agent. p. 5, ll. 24-27
p. 14, ll. 5-8

5.—The procedure for the transmission of coupons by dealers to the Controller is described as follows in affidavits, filed in these proceedings, by the Appellant and other employees of the Textile Control Department: pp. 14-20

- 30 (a) There is a Coupon Bank, in which is kept a ledger account for every dealer licensed to import textiles. Each dealer's account is debited with the number of coupons appropriate to the textiles which he imports and credited with the number of coupons which he surrenders. p. 14, ll. 23-29
- (b) Each dealer has a paying-in book, supplied by the Appellant. A dealer who wishes to surrender coupons fills in a paying-in slip and brings it and the coupons to the Bank. p. 14, ll. 30-33
- 40 (c) The receiving clerk at the Bank counts the coupons, checks the number against the number shown in the foil and counterfoil of the slip, enters the number in the scroll book, and obtains the signature or initials of the depositor to this entry. The receiving clerk then passes the coupons and the slip to the assistant shroff. p. 14, ll. 34-40;
p. 19, ll. 25-40

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p. 14, ll. 42-46 ;
p. 18, ll. 7-13

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

p. 15, ll. 5-8 ;
p. 17, ll. 6-12

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

p. 15, ll. 8-13

(f) The chief clerk countersigns both foil and counterfoil, records in the credit control book the number of coupons shown in the slip, detaches the foil, and returns the paying-in book (containing 10 the counterfoil) to the dealer.

p. 15, ll. 14-15

(g) The foil is then passed to the ledger clerk, who keeps the dealer's ledger account.

p. 14, ll. -20

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

p. 15, ll. 30-35

(i) On the 24th September, 1946, the Respondent surrendered, 20 according to the scroll book, shroff's register, and credit control book, 1,000 coupons ; according to the ledger account, 31,000 coupons.

(ii) There was a similar discrepancy between entries for the 3rd October, 1946, the respective figures being 2,000 and 52,000.

p. 17, ll. 13-14 ;
p. 18, ll. 17-18,
20-23 ; p. 20, ll. 4-6
p. 19, l. 41—p. 20,
l. 4 ; p. 20, ll. 7-9

7.—The shroff, assistant shroff and receiving clerk concerned identify, in their affidavits, their signatures and initials on the paying-in slips in question. The receiving clerk states that the relevant entries in the scroll book are in his handwriting, and are correct, identifies his signatures thereto, and states that both entries, after being completed by him, were initialled 30 in his presence by the depositor.

p. 20, ll. 22-40

8.—The two paying-in slips were submitted to the Government Examiner of Questioned Documents. He reported certain irregularities in the writing on both slips.

p. 16, ll. 9-12

9.—The Appellant appointed an Assistant Controller of Textiles to hold an inquiry into the matter, and considered statements recorded by him, including statements by the Respondent's brother (who was supervising the business, the Respondent being away in India at the time, and two employees of the Respondent. On the 18th February, 1947, the Appellant wrote to the Respondent pointing out the discrepancies. In this letter, the 40 Appellant said that interpolations had been made in the two paying-in

pp. 8-9

slips, in the same writing as the original entries on the slips, to show the bigger amounts as recorded in the ledger account, and he had reason to believe that the Respondents got these interpolations made, in order to get a larger credit in the ledger account than he was entitled to have. He invited the Respondent to submit an explanation in writing by 4 p.m. on the 20th February, and informed him that he could see the documents mentioned in the letter at any time during office hours.

10.—An answer to this letter was sent by the Respondent's proctor on the 20th February, stating pp. 9-11

- 10 (i) that the Respondent had been away in India for nearly a year and his business was being conducted by a manager, who had instructions from the Respondent to get assistance from Messrs. H. A. N. Mohamed & Co., the proprietor of that firm being a brother of the Respondent ;
- (ii) that the manager denied all the allegations made against the Respondent in the Appellant's letter ;
- (iii) that the Appellant's officers had tampered with the paying-in book after it had been handed to them for investigation, and the only irregularity on the slips was the crowding of certain letters on one foil and both counterfoils ;
- 20 (iv) that the coupons had been surrendered on both occasions by one Peter Fernando, an employee of Messrs. H. A. N. Mohamed & Co., who had also surrendered coupons for that firm on two occasions on which similar irregularities were alleged to have occurred ; no explanation had been got from him, as he had not come to work since the 15th February ;
- (v) that Fernando's signature appeared in the scroll book for the 24th September, but undecipherable initials for the 3rd October ;
- 30 (vi) that all coupons shown in the ledger account had been duly surrendered.

The proctor suggested that no fraud could have occurred without the complicity of the Appellant's officers, whereas there was no proof of complicity of the Respondent's employees. He submitted that it was not fair for the Appellant, in view of his interest, to act in the matter.

11.—After considering this letter, the Appellant being of opinion that he had reasonable grounds to believe that the Respondent was unfit to be allowed to continue as a dealer in textiles, cancelled, under Reg. 62, the Respondent's textile licence. He informed the Respondent of this by a letter dated the 21st February. p. 16, ll. 22-27

40 12.—The Respondent presented to the Supreme Court of Ceylon a Petition, supported by an affidavit, dated the 25th February, 1947, praying pp. 2-7 p. 4, ll. 30-33

RECORD

the Court *inter alia*, to issue a mandate in the nature of a writ of certiorari quashing the order contained in the Appellant's letter of the 21st February. The grounds set out in the Petition were—

p. 4, ll. 12-28

- (i) that the Appellant's allegations were untrue ;
- (ii) that the Respondent had had no opportunity of proving this at an inquiry ;
- (iii) that the allegations disclosed grave criminal offences, which the Appellant had no jurisdiction to determine under Reg. 62 ;
- (iv) that the Appellant was not exercising his jurisdiction *bona fide* under Reg. 62 ;
- (v) that the Appellant had no jurisdiction to act under Reg. 62, because he was an interested person.

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pp. 12-13

13.—On the 26th February, 1947, Howard, C.J., issued a rule nisi, and ordered the Appellant to show cause why the Respondent's application for a mandate should not be allowed. The application was argued before Dias, J., on the 30th September, and the learned Judge delivered a reserved Judgment on the 2nd October, 1947.

pp. 23-27

p. 23, ll. 16-19

14.—The learned Judge, following a decision of a Full Bench of the Supreme Court in *Abdul Thassin v. Edmund Rodrigo* (1947), 48 N. L. R. 121, held that the Controller of Textiles, when acting under Reg. 62, acted judicially and was amenable to certiorari. After considering the facts, he held that the Appellant had had no reason to believe either that the Respondent caused interpolations to be made in the paying-in slips or that he contrived to obtain a falsification of the ledger account. The Appellant's jurisdiction under Reg. 62 depended on the objective existence of reasonable grounds for his belief, and he had, therefore, acted without jurisdiction. The learned Judge ordered that the rule nisi be made absolute with costs and the mandate issue.

p. 25, ll. 38- 42

p. 27, ll. 5-22

p. 27, ll. 37-38

15.—In appeal No. 17 of 1949, *Nakkuda Ali v. M. F. De S. Jayaratne* (reported at 66 T. L. R., pt. 2,214), the Judicial Committee of the Privy Council decided that the Controller of Textiles, when acting under Reg. 62, does not act judicially, and is not amenable to a mandate in the nature of a writ of certiorari. The Judicial Committee held that *Abdul Thassin v. Edmund Rodrigo* was wrongly decided on this point. The Judgment of the Judicial Committee was delivered after the Judgment of Dias, J., in the present case.

16.—The Appellant respectfully submits that the learned Judge was wrong in holding that he had not reasonable grounds to believe that the Respondent was unfit to be allowed to continue as a dealer. The Appellant was not bound to act only on strict proof of the Respondent's unfitness ;

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he was entitled to act if there existed reasonable grounds for belief in such unfitness. The Appellant submits that the evidence filed on his behalf and on behalf of the Respondent constituted such reasonable grounds.

17.—The Appellant respectfully submits that the Decree of the Supreme Court of Ceylon should be set aside, and in place thereof an order should be made that the rule nisi be discharged with costs, for the following (amongst other)

REASONS

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1. BECAUSE a mandate in the nature of a writ of certiorari will not lie in respect of the cancellation of a textile licence by the Controller of Textiles under Reg. 62.
2. BECAUSE the Appellant had reasonable grounds for believing the Respondent to be unfit to be allowed to continue as a dealer.

J. G. LE QUESNE.

In the Privy Council.

No. 24 of 1950.

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BETWEEN

M. F. DE S. JAYARATNE APPELLANT

AND

M. MOHAMED MIYA ... RESPONDENT.

CASE FOR THE APPELLANT

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