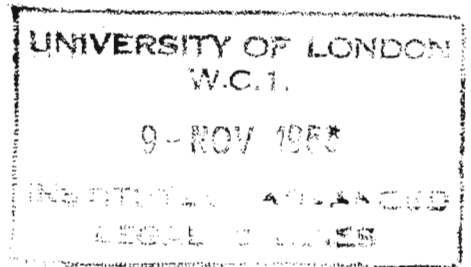


11/1951

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No.....



Supreme Court of Ceylon
Application No. 76 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

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

AND

M. MOHAMED MIYA of No. 212, Second Cross
Street, Pettah, Colombo.....*Petitioner-Respondent.*

RECORD
OF PROCEEDINGS

RECORD OF PROCEEDINGS

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No.....

Supreme Court of Ceylon
Application No. 76 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

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

AND

M. MOHAMED MIYA of No. 212, Second Cross
Street, Pettah, Colombo.....*Petitioner-Respondent*.

RECORD OF PROCEEDINGS

Application of Petitioner for a Mandate in the Nature of a Writ of Certiorari

No. 1 Application of Petitioner for a Mandate in the Nature of a Writ of Certiorari (Motion) 25-2-47

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 a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6).

10 M. MOHAMED MIYA of No. 212, Second Cross Street, Pettah, Colombo.....Petitioner

vs.

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

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

- 20 (1) to make a Rule Nisi directing the issue on the respondent abovenamed, the Controller of Textiles, appointed as abovementioned, 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 further steps be taken on the footing of the order of the respondent contained in his letter to the petitioner dated the 21st February, 1947, and referred to in paragraph 6 of the petition ; and
(3) to make such Order as the justice of the case may require.

Sgd. K. SHANMUGARAJAH, Proctor for Petitioner.

30 Colombo, 25th February, 1947.

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Application
of Petitioner
for a Man-
date in the
Nature of a
Writ of
Certiorari
(Petition)
25-2-47
—continued.

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).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo*Petitioner*

vs.

M. F. DE S. JAYARATNE, Controller of Textiles (appointed
under the Defence (Control of Textiles) Regulations) 106, 10
Havelock Road, Colombo*Respondent.*

To

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

On this 25th day of February, 1947.

The Petition of the petitioner abovenamed appearing by C. M. Kumaravetpillai and his Assistant, Kumaravetpillai Shanmugarajah, his Proctors, states as follows :—

1. The petitioner abovenamed was granted textile licence No. C/1483 20 under the Defence (Control of Textiles) Regulations and functioned thereunder as a licensed dealer and importer in textiles under the name and style of Cassim Stores at No. 212, Second Cross Street, Pettah, Colombo.

2. On or about the 13th 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 80,000 points in respect of the textile coupons surrendered on behalf of the petitioner to the Textile Coupon Bank on 24th September, 1946, and 3rd October, 1946.

3. By Order No. CR. C. 1483 of 18th February, 1947, (marked " A " and filed herewith) the respondent abovenamed purporting to act under 30 Regulation No. 33 of the Defence (Control of Textiles) Regulations, prohibited the petitioner from purchasing or selling any regulated textile from or to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town.

4. By letter No. CR. C. 1483 of 18th 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 allega-

tions set out therein and informed the petitioner that if the allegations in paragraph 1 (2) thereof were as set out, the respondent abovenamed would regard the petitioner as a person unfit to continue to hold a textile licence and that the respondent proposed accordingly to revoke the textile licence of the petitioner.

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... continued.

5. By letter dated 20th February, 1947 (a true copy whereof marked letter "C" is also herewith filed) the petitioner, through his Proctor, showed cause, and submitted *inter alia* :—

- 10 (a) that the petitioner denied all and singular the allegations made by the respondent against the petitioner in the aforesaid letter No. CR. C. 1483 of 18th 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 abovenamed could not at law revoke the petitioner's licence until the criminal offences were investigated into and disposed of in
- 20 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 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 receipts therefor, from the textile coupon bank, which was administered under the control and supervision of the respondent abovenamed ;
- 30 (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. 1483/4327 dated 21st February, 40 1947 (marked letter "D" and also herewith filed) made order, revoking the petitioner's licence, under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945, with effect from 21st February, 1947.

7. That the aforesaid Order of the respondent revoking the textile licence of the petitioner, the petitioner is unable to dispose of stocks in

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hand of the estimated value of about Rs. 30,000 or to clear from His Majesty's Customs at Colombo, textiles imported by him of the estimated value of about Rs. 200,000 or to arrange for the landing in the port of Colombo of textiles in transit, or to ship to this Island, textiles of the estimated value of Rs. 200,000 or to accept delivery of a quantity of further textiles of the estimated value of about Rs. 150,000 for which the petitioner had placed orders which are about to be executed. 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 10 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 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 20 of Regulation 62 of the Defence (Control of Textiles) Regulations, 1945 ;
- (d) that the respondent in revoking the petitioner's licence was not exercising jurisdiction *bona fide* under Regulation 62 aforesaid for the reasons abovementioned ;
- (e) 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 30 the aforesaid Order made by the respondent abovenamed, contained in his letter to the petitioner dated 21st February, 1947 (marked " D ") and referred to in paragraph 6 above ;
- (b) to make Order directing the respondent that no further steps be taken on the footing of the aforesaid Order dated 21st February, 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. K. SHANMUGARAJAH, 40
Proctor for Petitioner.

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
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—continued.

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).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo*Petitioner*

vs.

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

To

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

I, Noor Mohamed of No. 212, Second Cross Street, Pettah, Colombo,
not being a Christian do hereby solemnly sincerely and truly declare and
affirm as follows :—

1. I am the recognised agent of the petitioner abovenamed and the
manager of the petitioner's business in Ceylon and am carrying on the
business of the petitioner who is away in India and there is no other agent
or attorney of the petitioner in Ceylon besides me, and am personally
aware of the facts herein affirmed to.

2. The petitioner abovenamed was granted textile licence No. C. 1483
under the Defence (Control of Textiles) Regulations and functioned there-
under as a licensed dealer and importer in textiles under the name and
style of Cassim Stores at No. 212, Second Cross Street, Pettah, Colombo.

3. On or about the 13th 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 80,000 points in respect
of the textile coupons surrendered on behalf of the petitioner to the
Textile Coupon Bank on 24th September, 1946, and 3rd October, 1946.

4. By Orders No. CR. C. 1483 of 18th February, 1947 (marked " A ")
and filed herewith) the respondent abovenamed, purporting to act under
Regulation No. 33 of the Defence (Control of Textiles) Regulations, pro-
hibited 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.

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Application
of Petitioner
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—continued.

5. By letter No. CR. C. 1483 of 18th 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 and informed the petitioner that if the allegations in paragraph 1 (2) thereof were as set out, the respondent abovenamed would regard the petitioner as a person unfit to continue to hold a textile licence and that the respondent proposed accordingly to revoke the textile licence of the petitioner.

6. By letter dated 20th February, 1947, (a true copy whereof marked letter " C " is also herewith filed) the petitioner, through his Proctor, 10 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. 1483 of 18th 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 20 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 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 receipts therefor, from the Textile Coupon Bank which was administrated under the 30 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.

7. 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 40 in the organisation and working of the Textile Coupon Bank, the respondent has by his letter No. CR. C. 1483/4327 dated 21st February, 1947 (marked letter " D " and also herewith filed) made order, revoking the petitioner's licence, under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945, with effect from 21st February, 1947,

8. 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. 30,000 or to clear from His Majesty's Customs at Colombo, textiles imported by him of the estimated value of about Rs. 200,000 or to arrange for the landing in the port of Colombo of textiles in transit, or to ship to this Island, textiles of the estimated value of Rs. 200,000, or to accept delivery of a quantity of further textiles of the estimated value of about Rs. 150,000 for which the petitioner had placed orders which are about to be executed. 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.

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of Petitioner
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---continued.

9. I humbly submit :

- (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 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 ;
- (d) that the respondent in revoking the petitioner's licence was not exercising jurisdiction *bona fide* under Regulation 62 aforesaid for the reasons abovementioned ;
- (e) 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 25th day of February, 1947.

Sgd. NOOR MOHAMED.

Before me :

Signed (Illegibly)
Commissioner of Oaths.

No. 1
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Nature of a
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(Annexure A) MESSRS. CASSIM STORES,
25-2-47
—continued.

(Annexure A)

Control of Textiles Office,
P. O. Box 538, Colombo.
My No. CR. C. 1483 of 18-2-47.

Gentlemen,

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 Asst. 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.

I am, Gentlemen,
Your obedient servant, 20

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

(Annexure B)

(Annexure B)

Control of Textiles Office,
P. O. Box No. 538, Colombo.
My No. CR. C. 1483 of 18-2-47.

MESSRS. CASSIM STORES,
212, 2nd Cross Street, Colombo.

Gentlemen,

An examination of your account in the Coupon Bank and the supporting documents and registers has 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 under-

mentioned dates were as shown in column (2) below, your ledger account has been credited on the same dates with amounts as shown in column (3) :

(1) Dates	(2) Points surrendered according to register kept by the Counter Clerk, Shroff and Asst. Controller	(3) Points credited in your ledger account
24-9-46	1,000	31,000
3-10-46	2,000	52,000

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25-2-47
—continued.

10 (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 account. The interpolations and the original entries appear to be in the same writing.

I have reason to believe that you got these interpolations made and contrived to obtain in the Ledger Account credit for a bigger amount than you were entitled to on the basis of the coupons surrendered by you.

20 If that is so, I have to regard you as a person unfit to continue to hold a licence to deal in textiles and I propose accordingly to revoke your licence.

2. If you have any explanation to offer in respect of these matters in addition to what you have already stated to the Assistant Controller, please send it to me in writing on or before 4 p.m. on Thursday, 20th February, 1947.

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.

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

(Annexure C)

(Annexure C)

5, Ferry Street, Colombo,
Ceylon,
20th February, 1947.

THE CONTROLLER OF TEXTILES,
106, Havelock Road, Colombo.

40 Dear Sir,

With reference to your letter No. CR. C. 1483 of 18-2-47, addressed to Messrs. Cassim Stores, 212, Second Cross Street, Colombo, I am instructed to submit :

(i) that the proprietor of the firm of Messrs. Cassim Stores is in India, and has been away in India for nearly an year. During the proprietor's

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(Annexure C)
25-2-47
--continued.

absence the business is carried on by a paid manager, who is under instructions from the firm's proprietor, to obtain the assistance of the proprietor or the manager or other employee of the firm of Messrs. H. A. N. Mohamed & Co. of Main Street, Colombo. The proprietor of Messrs. Cassim Stores is a brother of the proprietor of Messrs. H. A. N. Mohamed & Co. The two businesses being however worked separately and independently ;

(ii) that Mr. Noor Mohamed, the present Manager of Messrs. Cassim Stores, denies all and singular the allegations made against the firm in your letter ;

(ii) that Mr. Noor Mohamed does not know either to read or write well the English language. He utilised the services of one Peter Fernando of the firm of H. A. N. Mohamed & Co., who was entrusted with the work of surrendering textile coupons on behalf of that firm also, to surrender the textile coupons of the firm of Messrs. Cassim Stores also ;

(iv) that an examination of the relevant documents specified in your letter under reference, by my client's lawyers, reveal the following facts :—

(a) that the two impugned pay-in-slips, foil and counterfoil appear out of their chronological order in the paying-in book of Messrs. Cassim Stores. When Mr. Noor Mohamed gave the paying-in book to the officers of your department the counterfoils of the used paying-in-slips and the blank unused slips in foil and counterfoil were in order. At a later stage, when the paying-in book was produced by your officers in the course of the investigations, the leaves of the book, including the counterfoils were loose. The paying-in book has obviously been tampered with by the officers of your department, since it was taken from Mr. Noor Mohamed ;

(b) that one of the two foils shows no interpolation of any kind. In the other foil and the two counterfoils some letters of the first word giving the number of coupons surrendered have been crowded. The figures on all the documents show no interpolation nor any amendments which can on the fact of them give rise to suspicion, as having been inserted after the documents had been signed by the officers of your department;

(c) that the counter clerk's Scroll Book contains undecipherable initials in respect of the paying-in of 3rd October, 1946, and the signature of one P. Fernando in respect of the paying-in of 24th September, 1946.

(v) that it is significant that when the entries are examined there is only one impugned entry in respect of each of the months, September and October, 1946, in respect of Messrs. Cassim Stores and one entry in respect of each of the months, November and December, 1946, in respect of Messrs. H. A. N. Mohamed & Co. The surrenders in all these four cases were entrusted to Peter Fernando. Peter Fernando has not come to work at his employer's since 15th February, 1947. My client has not been able to obtain from him any explanation in respect of the allegations of interpolation ;

(vi) that it would be unjust and unfair to revoke the textile licence of Messrs. Cassim Stores, for any alleged acts of fraud, when it is not possible to say with any certainty whether the fraud was committed entirely by the officers in the Coupon Bank acting by themselves alone or with complicity on the part of one of my client's employees. It is admitted that no fraud could have occurred without complicity on the part of one or more officers of your department and it cannot be asserted that the fraud cannot be explained except on the basis of complicity of one of my client's employees ;

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(Annexure C)
25-2-47
--- continued.

10 (vii) that so far as Messrs. Cassim Stores are concerned all the textile coupons as shown in your ledger were duly surrendered by the firm and the books of the firm show such surrender, supported by the signatures and initials of your officers on the counterfoils of the paying-in-slips returned to Messrs. Cassim Stores, after the textile coupons were sent for surrender to the Coupon Bank ;

(viii) that in these circumstances my client desires that the matter be investigated on the question of the allegations of forgery contained in your letter and that pending adjudication by a proper Court of Law my client's textile licence be allowed to continue. My client also urges that
20 you do not have the necessary machinery to make an investigation into the charges of such a serious nature.

2. My client also submits respectfully that as the organisation and working of the Bank and conduct of its officers concerned are involved it may not be fair for you to act in this matter as it may be suggested that you have an interest in protecting your system and your officers.

Yours faithfully,
Sgd. K. SHANMUGARAJAH,
Proctor for Messrs. Cassim Stores.

(Annexure D)

(Annexure D)

30

Control of Textiles Office,
P. O. Box 538, Colombo.
My. No. CR. C. 1483/4237 of 21-2-1947.

MESSRS. CASSIM STORES,
212, 2nd Cross Street, Pettah, Colombo.

Sirs,

With reference to my letter No. C/1483 of 18-2-47 and the letter of 18-2-47 submitted by your lawyers 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 21-2-47.

40 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.

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25-2-47
—continued.

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. 10

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

No. 2

Order of the Supreme Court

No. 76

SUPREME COURT MINUTE PAPER ON APPLICATIONS

Subject: Writ of *Certiorari* on Controller of Textiles.

Date: 25-2-47. 20

Papers filed in the Registry, Supreme Court.

Listed before the HONOURABLE SIR JOHN HOWARD, Kt., K.C., Chief Justice.

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

ORDER

Date: 26-2-47.

Rule Nisi to issue. No further steps to be taken by the Controller on the footing of the Order contained in his letter dated the 21st of February, 1947, referred to in paragraph 6 of the petition, pending the 30 hearing and determination of this application.

Sgd. C. TOUSSAINT,
Bench Clerk.

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).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
 Colombo*Petitioner*
 No. 76. *vs.*
 M. F. DE S. JAYARATNE, Controller of Textiles (appointed
 under the Defence (Control of Textiles) Regulations,) 106,
 Havelock Road, Colombo*Respondent.*

No. 2
 Order of the
 Supreme
 Court
 26-2-47
 —continued.

To the Respondent abovenamed.

Upon reading the Petition and Affidavit of the abovenamed petitioner
 (copies whereof are hereto annexed) and on the motion of Mr. H. V.
 10 Perera, K.C., with Mr. C. Suntharalingam, praying for the issue on the
 respondent abovenamed, the Controller of Textiles, appointed as above-
 mentioned, of a Mandate in the nature of a Writ of *Certiorari*.

It is Ordered that the respondent abovenamed do, show cause, if
 any, to the satisfaction of the Supreme Court holden at Colombo on
 Friday the 21st day of March, 1947, at 11 o'clock in the forenoon, or so
 soon thereafter as may be convenient to the said Court, why the aforesaid
 application should not be allowed.

It is directed that the respondent abovenamed do not take any
 further steps on the footing of the Order of the respondent contained in
 20 his letter to the petitioner dated 21st February, 1947, and referred to in
 paragraph 6 of the petition, pending the hearing and determination of the
 aforesaid application.

By Order of Court,
 Sgd. F. C. VAN CUYLENBURG,
for Registrar, Supreme Court.

The 26th day of February, 1947.

No. 3

Affidavit of Respondent

No. 3
 Affidavit of
 Respondent
 25-7-47

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
 30 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).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
 Colombo *Petitioner*
 No. 76. *vs.*
 M. F. DE S. JAYARATNE, Controller of Textiles (appointed
 under the Defence (Control of Textiles) Regulations) 106,
 Havelock Road, Colombo*Respondent.*

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

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 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. 212, Second Cross Street, Pettah, in Colombo under Licence No. 1483/C-1483.

3. On or about the 25th day of January, 1947, in the course of checking of the ledger account at my office relating to textile 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, 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 accounts 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 hereof. 20

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. 40
- (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-slips 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.

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
24-9-46	1,000	31,000
3-10-46	2,000	52,000

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 " and " C " affidavits of Kuruppu Appuhamilage David Perera, Stephen Gomis Abeysinghe Jayawardene and Uragodage Piyasiri Perera respectively, the Shroff, Chief Assistant Shroff and one of the Receiving Clerks of the Textile Coupon

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

Bank 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 "D" 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 thereof and I annex marked "E" and "F" 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 among others of B. Mohamed, Seedharam, Saminathan and the further written explanation offered by the petitioner as set out in the document marked "H" and referred to in paragraph 6 of his petition, 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.

20

Before me :

Sgd. (Illegibly),
A Justice of the Peace.

(Annexure A)

(Annexure A)

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).

30

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo *Petitioner*

No. 76. *vs.*

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

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

1. I was employed by the Textile Control Department as Shroff 40 since 4th February, 1946. I was earlier Assistant Shroff at the Colombo

Kachcheri till October, 1942, and later the Shroff at the Vavuniya Kachcheri.

No. 3
Affidavit of
Respondent
(Annexure A)
25-7-47
—continued.

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

3. The paying-in-slip 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 signatures and initials on the foil and counterfoil of slip No. 6116.

5. According to the register kept by me the coupon points surrendered are considerably less than the points now appearing in the foil and counterfoil bearing serial No. 6116 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—
the letters 'thirty' and the figure '3' in the number '31000' in both foil and counterfoil of paying-in-slip No. 6116 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)

(Annexure B)

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).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo *Petitioner*

No. 76. vs.

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

No. 3
Affidavit of
Respondent
(Annexure B)
25-7-47
—continued.

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 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. 6116 and 6233.

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 signature and initials on the foil and counterfoil of paying-in-slip No. 6233 of 3rd October, 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. 6233 in the Shroff's register. The entry shows that 2,000 coupons were surrendered whereas the relative foil and counterfoil now show the amount as 52,000

7. I affirm that :

- (a) the letters ' thirty ' and the figure ' 3 ' in the number ' 31,000 ' in both foil and counterfoil and paying-in-slip No. 6116 ; and
- (b) the letter ' fifty ' and the figure ' 5 ' in the number ' 52,000 ' in both foil and counterfoil of paying-in-slip No. 6233,

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. 6233.

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

Sgd. S. G. A. JAYAWARDENE.

Before me :
Sgd. D. B. KANNANGARA,
A Justice of the Peace.

(Annexure C)

No. 3
Affidavit of
Respondent
(Annexure C)
25-7-47
—continued.

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).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo *Petitioner*

No. 76. *vs.*

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

I, URAGODAGE PIYASIRI PERERA of Mulleriyawa, Angoda, 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 :

- 20 (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
30 paying-in-slip ;
(c) to enter the following particulars in the Scroll Book :—

- (1) the date ;
(2) the licence number of the dealer ;
(3) the dealer's name ;
(4) the number of coupons surrendered ;
(5) receiving clerk's signature ;
(6) surrenderer's signature or initials.

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

I affirm that the relative entries made in the Scroll Book as on the 24th September and 3rd October, 1946, in which it has been entered that

No. 3
Affidavit of
Respondent
(Annexure C)
25-7-47
—continued.

Messrs. Cassim Stores paid in 1,000 and 2,000 coupon points respectively 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 counterfoils of the paying-in-slips bearing Nos. 6116 and 6233.

6. 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 a dealer on the 24th September and 3rd October, 1946.

7. The letters 'thirty' and the figure '3' in the number '31,000' and the letters 'fifty' and the figure '5' in the number '52,000' on both foils and counterfoils of paying-in-slips Nos. 6116 and 6233 respectively 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.

Sgd. U. P. PERERA.

Before me :
Sgd. D. B. KANNANGARA,
A Justice of the Peace.

20

(Annexure D)

(Annexure D)

Report No. 34 (H 60/46)
Office of the Government Analyst,
Colombo, 22nd February, 1947.

The Controller of Textiles sent me through Mr. K. Mahendra, A.C.T., on 21-2-47 the Paying-in Book of Cassim Stores for examination of credit forms Nos. 6116 of 24-9-46 and 6233 of 3-10-46.

No. 6116 of 24-9-46

In this paying-in-slip and the counterfoil 'Thirty' is cramped, compared to 'One thousand' and is in smaller letters. 30

No. 6233 of 3-10-46

The word 'Fifty' is written in a cramped manner before 'two thousand'. Part of the writing in 'Fifty' lies on top of the initial stroke of 't' of 'two'.

The '5' in both the paying-in-slip and the counterfoil is relatively large and written with more space after them than the other figures.

Sgd. T. NAGENDRAM,
Govt. Examiner of Questioned Documents.

THE TEXTILE CONTROLLER,
Colombo.

40

(Annexure E)

No. 3
Affidavit of
Respondent
(Annexure E)
25-7-47
—continued.

Credit Form

6116 6116

ASST. CONTROLLER OF TEXTILES
(DISTRIBUTION OFFICE)
Textile Control Dept.
24 SEP. 1946

Textile Control Department.

A/c No. 1483/C. 1483

Date : 24-9-1946.

Paid in to Credit of Cassim Store, Second Cross Street.

A/c No. C 1483 Date : 24-9-1946

Thirty-one thousand only.

For Credit of Cassim Store,
Second Cross Street, Pettah.
Thirty-one thousand only Coupons.

Particulars

Particulars	
Consumer Coupons 31,000	Sgd. Illegibly <i>Receiving Clerk.</i>
Special "	
Coupon Equivalent	Sgd. Illegibly. <i>Shroff.</i>
Total 31,000	Sgd. Illegibly <i>Staff Assistant</i>

Consumer Coupons 31,000	
Special "	
Coupon Equivalent Documents	
Total 31,000	

Shroff : Signed Illegibly.

By Signed Illegibly.

Ledger Clerk Sgd. Illegibly.

Signed Illegibly
Staff Assistant

Folio 162

No. 3
Affidavit of
Respondent
(Annexure F)
25-7-47
--continued.

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(Annexure F)

6233 6233

Credit Form.

ASST. CONTROLLER OF TEXTILES
(DISTRIBUTION OFFICE)
Textile Control Dept.
3 OCT. 1946

Textile Control Department.

A/c No. C. 1483

Date : 3-10-1946

Paid in to Credit of Cassim Store, Second Cross Street.

A/c No. C 1483 Date : 3-10-1946

Fifty-two thousand only.

For Credit of Cassim Store,
Second Cross Street, Colombo.
Fifty-two thousand only Coupons.

Particulars

Particulars	
Consumer Coupons 52,000	Sgd. Illegibly Receiving Clerk
Special "	
Coupon Equivalent	Sgd. Illegibly Asst. Shroff
Total 52,000	Sgd. Illegibly Staff Assistant.

Consumer Coupons 52,000	
Special "	
Coupon Equivalent Documents	
Total 52,000	

Shroff Signed Illegibly.
By Signed Illegibly.
Ledger Clerk Sgd. Illegibly
Signed Illegibly.
Staff Assistant.

Folio 162

Order of the Supreme Court

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)*Present* : DIAS, J.*Counsel* : H. V. PERERA, K.C., with S. NADESAN, for the Petitioner.
H. W. R. WEERASOORIYA, C.C., for the Respondent.*Argued on* : September 30, 1947.*Delivered on* : October 2, 1947.10
DIAS, J.

The petitioner, who trades under the name of Cassim Stores in the Pettah, is the holder of a textile licence. By his order dated February 21, 1947, the Controller of Textiles (the respondent) purported to cancel the petitioner's licence under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945. In the case of *Abdul Thassim vs. Edmund Rodrigo* (1947) 48 N. L. R. 121 a Full Bench held that the Controller of Textiles when he exercises functions under Regulation 62 acts judicially, and is, therefore, amenable to a Writ of *Certiorari*.

20 The petitioner moves for a mandate in the nature of a Writ of *Certiorari* against the respondent to quash the order of February 21, 1947, on the ground that it was made without jurisdiction.

In order to appreciate the submissions made, it is necessary to set out the relevant facts.

It appears that textile dealers in the course of their trade accumulate textile coupons handed in by customers when they buy control textiles. These coupons once they have been exchanged for cloth are exhausted, and cease to be lawfully usable. In order to prevent fraud, every textile dealer has to keep books showing the quantity of cloth he sells and the
30 number of coupons he accumulates in the process. These exhausted coupons the dealer has to send to the Controller's Department where they are collected and "cancelled".

A rather elaborate office system has been evolved in order to prevent fraud. The dealer is supplied by the respondent with a paying-in book in foil and counterfoil—see exhibits E and F—in which the dealer has to note in letters and numerals the number of coupons which are sent to the Textile Controller's Department for cancellation. The dealer or his servant takes the paying-in book together with the coupons and hands them in to the Textile Controller's Department. A receiving clerk is then
40 supposed to count the coupons and check the number of coupons with the figures given in the paying-in book of the dealer. He then enters the

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Order of the
Supreme
Court
2-10-47
-- continued.

number of coupons received in what is designated the " scroll book " and obtains the signature of the dealer or his servant in the scroll book. He then sends the paying-in book (foil and counterfoil) to the Assistant Shroff. This officer recounts the coupons and again checks their number with the foil and counterfoil in the dealer's paying-in book, initials the foil and counterfoil, retains the coupons and sends the paying-in book to the shroff. The assistant shroff is expected to send the coupons " elsewhere " for " cancellation ".

The shroff when he receives the paying-in book enters in his register the number of " points ", *i.e.*, the coupons appearing in the foil and counterfoil of the dealer's paying-in-slip. He appends his own signature to the foil and counterfoil, enters in the Credit Control Book the number of points appearing in the paying-in-slips, detaches and retains the foil of the paying-in-slip, returns the counterfoil and the paying-in book to the dealer or his servant, and sends the foil of the paying-in-slip to the Ledger Clerk. This officer posts up in the dealer's folio of the ledger a credit entry of the number of points appearing in the foil. It is the practice for the Textile Control Department from time to time to send a copy of this ledger folio to the dealer, so that the latter may check up his own books in regard to the number of coupons surrendered by him to the Textile Controllor's Department.

There are two transactions involved in this case—one on September 24, 1946—Exhibit E, and the other on October 3, 1946—Exhibit F. In the scroll book and the shroff's register under the two dates are entered 1,000 and 2,000 textile coupons as having been handed in by the petitioner's servant, Peter Fernando, whose signature appears in Exhibits E and F as well as in the scroll book. In the ledger kept by the Textile Controllor, however, these figures have become 31,000 and 52,000 respectively—an excess of 80,000 textile coupons. If the foils and counterfoils of the paying-in books E and F are scrutinised, it is obvious that the words " Thirty-one thousand " and " Fifty-two thousand " are false entries. They originally read " One thousand " and " Two thousand " respectively, but in another handwriting the words " Thirty " and " Fifty " have been added in front of " one thousand " and " two thousand ", and the numerals also could have been similarly falsified.

It is obvious, therefore, that a fraud of considerable magnitude has been in progress, whereby dishonest persons by such falsifications as in this particular case could have obtained possession of 80,000 used coupons, which if sold in the " black market " at Re. 1 per coupon would have enabled somebody to pocket Rs. 80,000. Peter Fernando, the servant of the petitioner, having taken E and F to the Textile Control Department and having signed the scroll book, could not have failed to observe that the counterfoils E and F, which were for 1,000 and 2,000 coupons respectively when he handed them in and received back the counterfoils E and F, had been altered to 31,000 and 52,000. These counterfoils of E and F were taken by the Textile Controllor from the petitioner's possession. We are not told whether the petitioner's books were checked, and if so, what

entries they contained in regard to these two items. It is also to be noted that, although this fraud was detected early this year, up to date no action in the Criminal Courts has yet been taken against anybody, although the facts show that certain officers in the Textile Controller's Department and Peter Fernando must be involved in it. In fact, Peter Fernando is alleged to have disappeared.

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Order of the
Supreme
Court
2-10-47
continued.

So far as I can see on the materials before me, there is no proof that the petitioner was actually privy to this fraud, or that he in any way instigated or abetted his servant Peter Fernando or personally profited 10 by the fraud. It is, of course, a suspicious circumstance that a Pettah textile dealer should send paying-in-slips for 1,000 and 2,000 coupons and receive back a falsified counterfoil for 31,000 and 52,000 coupons and fail to detect the fraud; but suspicion alone does not amount to proof—*Rea vs. Abeywickreme* (1943) 44 N. L. R. at p. 259.

Under Regulation 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”. What evidence had the respondent to cause him to have “reasonable grounds to believe” that this petitioner was unfit to continue to act as 20 a dealer? In his letter B dated February 18, 1947, the Controller says: (a) that according to the scroll book of the receiving clerk and the registers kept by the shroff and the Assistant Controller the number of coupons surrendered by the petitioner on the two dates were 1,000 and 2,000 respectively, whereas in the Controller's ledger the figures are 31,000 and 52,000 respectively; (b) the respondent further says that on inspecting the corresponding paying-in-slips (E and F) submitted by the petitioner along with the coupons, it was found that interpolations had been made in the foil and counterfoil.

While everyone will be in agreement with what the respondent says, 30 there is nothing in what is stated in (a) and (b) to implicate the petitioner with these falsifications or the consequent fraud. The respondent then proceeds; “I have reason to believe that *you got these interpolations made, and contrived to obtain* in the ledger account, credit for a bigger amount than you were entitled to on the basis of the coupons surrendered. *If that is so*, I have to regard you as a person unfit to continue to hold a licence to deal in textiles, and I propose accordingly to revoke your licence”. The petitioner was asked to show cause by February 20, 1947.

The petitioner's complaint is that the grounds (a) and (b) given by the respondent could not have given him “reason to believe” that the 40 petitioner either caused the interpolations to be made in the paying-in-slips, or that he contrived to obtain the falsification of the Controller's ledger. I agree with this submission. On the facts which I have detailed at some length, granting that Peter Fernando was a party to this fraud, there is no evidence to show that the petitioner was either privy to it or aided or abetted it. It is to be noted that the document B must have been carefully drafted. The respondent does not say “Therefore I have reason to believe, etc.”. He could not have said that, because any in-

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Order of the
Supreme
Court
2-10-47
—continued.

telligent person would realise that that paragraph does not flow from or follow as a necessary consequence from the grounds (a) and (b). There is, therefore, force in the submission made by counsel for the petitioner that the respondent must have had some other undisclosed reason to believe that the petitioner caused the interpolations to be made and the ledger falsified. He submits that the failure to disclose those grounds and thereby failing to afford the petitioner an opportunity of meeting them, the respondent acted "unjudicially" and without jurisdiction and is, therefore, amenable to a Writ of *Certiorari*.

The answer of the respondent to this contention is that the conditions¹⁰ required by *Abdul Thassim vs. Edmund Rodrigo* have been fulfilled, that the petitioner was given an opportunity of showing cause, that he did show cause, that the respondent then made a regular order, and that this Court cannot now canvass the grounds upon which the respondent called upon the dealer to show cause. In my opinion this submission is unsound.

The remedy afforded by the Writ of *Certiorari* is of a special character. It is available whenever an inferior judicial tribunal, or a statutory authority vested with judicial or quasi-judicial powers has acted without jurisdiction, or in excess of its jurisdiction. The Textile Controller is an administrative and not a judicial officer. It was held in *Abdul Thassim vs. 20 Edmund Rodrigo* that the Textile Controller when exercising powers under Regulation 62 acts judicially. What then is his "jurisdiction?" Take the case of a Judge. The jurisdiction of a judicial officer has many facets. There is his territorial jurisdiction. There is his monetary jurisdiction. There is his capacity to try, his capacity to punish, etc. If a judicial officer acts in excess of any of these jurisdictions, or without jurisdiction, *Certiorari* will lie to correct a misuse of his powers. If a Commissioner of Requests entertains an action for divorce, he clearly acts without jurisdiction, for no Court of Requests can entertain or determine a matrimonial action. In such a case the Writ of *Certiorari* will be available to quash³⁰ that misuse of power. But assuming that a Commissioner of Requests entertains a plaint which he has the power to try, but proceeds to give judgment for the plaintiff or the defendant without hearing any evidence in such a case the Commissioner of Requests is acting *with jurisdiction*, although he is exercising his jurisdiction *illegally* or *irregularly*. In such a case *Certiorari* will not lie. The remedy of the aggrieved party is to appeal, or take some other step prescribed by law.

In the case of the Controller of Textiles his "jurisdiction" means the power or authority conferred on him by Regulation 62. When he

decides to act under Regulation 62 he is bound to act judicially, and his "jurisdiction", power, or authority depends on the existence of the fact or facts which caused him to have "reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer". Until then he has no jurisdiction. *Subjectively* the respondent may have in his mind various reasons why he considers the petitioner to be unfit to continue as a dealer; but once he decides to invoke against the petitioner his jurisdiction under Regulation 62, it should be made to appear *objectively* the foundation upon which that jurisdiction rests, namely that the respondent
 10 has reasonable grounds for his belief. If that condition is not made manifest *objectively*, I do not think it lies in the mouth of the respondent to say that this Court has no power to examine whether he had reasonable grounds for his belief, that is to say, to examine whether the respondent acted with or without "jurisdiction". The foundation of the respondent's jurisdiction depends on whether "he had reasonable grounds to believe" that this petitioner is unfit to continue as a dealer in textiles. It is on that and that alone the respondent's power and authority to act under Regulation 62 depends. If no reasonable grounds in that sense are
 20 apparent, then, in my opinion, the respondent acted without jurisdiction, and he is amenable to a Writ of *Certiorari*. Applying these principles to the facts of this case, I am of opinion that the respondent acted without jurisdiction, and that *Certiorari* is available.

It is admitted by counsel on both sides that the questions both of fact and law which arise in this case are covered by the judgment of Howard, C.J., in *The Application for a Writ of Certiorari on the Controller of Textiles (S. C. M. of September 19, 1947)*. Except for certain minor details like the number of coupons involved, etc., it is common ground that there is nothing either on the facts or on the law to distinguish that case from the present case. Crown Counsel candidly admitted that what
 30 he is endeavouring to do is to persuade me that the judgment of the learned Chief Justice is erroneous. He concedes that if that judgment is right, the reasoning in that judgment would govern the present case. I have, therefore, attempted without reference to the earlier case to reach an independent conclusion in this case. Having done so, I may be permitted to say that I respectfully agree with the judgment of the learned Chief Justice.

I direct that the rule *nisi* should be made absolute with costs, and that the Writ of *Certiorari* applied for should issue.

Sgd. R. F. DIAS,
Puisne Justice.

No. 5
Decree of the
Supreme
Court
2-10-47

Decree of the Supreme Court

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.

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).

M. MOHAMED MIYA of No. 212, Second Cross Street, 10
Pettah, Colombo*Petitioner*

vs.

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

To THE TEXTILE CONTROLLER (Respondent abovenamed),
Colombo.

This matter coming on for Final determination before the Honourable
Mr. Reginald Felix Dias, Puisne Justice, on 30th September, 1947, in the
presence of Mr. H. V. Perera, K.C., Advocate, with Mr. S. Nadesan, 20
Advocate, for the petitioner, and Mr. H. W. R. Weerasooriya, Crown
Counsel, for the respondent.

It is ordered that the Rule of this Court dated 26th February, 1947,
be made absolute, and that the Order of the respondent contained in his
letter to the petitioner dated 21st February, 1947, be and the same is
hereby quashed.

It is further ordered that the respondent do pay to the petitioner the
costs of this application.

Witness the Honourable Sir John Curtois Howard, Kt., K.C., Chief
Justice, at Colombo, this 2nd day of October, in the year of Our Lord, 30
One thousand Nine hundred and Forty-seven, and of our Reign the
Eleventh.

Sgd. F. C. VAN CUYLENBURG,
for Registrar, Supreme Court.

3-10-47.

**Application of Respondent 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 leave to appeal under
the provisions of the Appeals (Privy Council) Ordinance
(Cap. 85).

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo *Petitioner*

No. 76. *vs.*

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

M. F. de S. JAYARATNE, Controller of Textiles, 106, Have-
lock Road, Colombo*Respondent-Appellant,*

vs.

M. MOHAMED MIYA of 212, Second Cross Street, Pettah,
Colombo*Petitioner-Respondent.*

To

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

20 On this 29th day of October, 1947.

The petition of the Controller of Textiles the Respondent-Appellant
abovenamed appearing by Clifford Trevor de Saram, his Proctor, sheweth
as follows :—

1. That feeling aggrieved by the judgment and decree of this
Honourable Court pronounced on the 2nd day of October, 1947, the
respondent-appellant is desirous of appealing to His Majesty the King in
Council.

2. That the said judgment is a final judgment and the matter in
dispute on the appeal is of the value of over Five thousand rupees and
30 involves a question respecting a civil right of the value of over Five-
thousand rupees.

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

4. That notice of the intended application for leave to appeal was
served on the petitioner-respondent in terms of Rule 2 of the Rules in the
Schedule to the Appeals (Privy Council) Ordinance (Cap. 85) on the 14th
day of October, 1947, by affixing a copy of the notice on the front door

No. 6
Application
for Condi-
tional Leave
to Appeal
to Privy
Council
29-10-47
—continued.

at the entrance to the petitioner-respondent's place of business at No. 212, Second Cross Street, Pettah, Colombo, as appears from the affidavit of the Fiscal's Officer filed of record in these proceedings, in accordance with the directions of this Honourable Court.

Wherefore the respondent-appellant prays for conditional leave to appeal against the said judgment and decree of this Court dated the 2nd day of October, 1947, to His Majesty the King in Council.

Sgd. TREVOR DE SARAM,
Proctor for Respondent-Appellant.

No. 7
Judgment of
the Supreme
Court
granting
Conditional
Leave to
Appeal to
Privy
Council
19-1-48

No. 7.

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**Judgment of the Supreme Court granting Conditional Leave
to Appeal to the Privy Council**

Present : SOERTSZ, S.P.J., & CANEKERATNE, J.

Counsel : H. W. R. WEERASOORIYA, C.C., with V. TENNEKOON
for the Petitioner.

No appearance for the Respondent.

Argued on : 27th November, 1947.

Delivered on : 19th January, 1948.

CANEKERATNE, J.

This is an application for leave to appeal to His Majesty in Council 20 from an order made by this Court.

The respondent had textiles of the estimated worth of Rs. 30,000 at the time of the making of the order by the Controller : there were textiles imported by him of the estimated value of Rs. 200,000 lying at the Customs Office, Colombo ; he had ordered textiles, according to his affidavit, from abroad of the estimated values of Rs. 150,000 and of Rs. 200,000.

The decision in the case of *Bapu Miya Mohamed Miya vs. M. F. de Jayaratne*, Controller of Textiles (Supreme Court Application No. 75/419), decided a few days ago applies to this application : it is allowed with costs.

Sgd. A. R. H. CANEKERATNE, 30

Puisne Judge.

SOERTSZ, S.P.J.,

I agree.

Sgd. F. J. SOERTSZ,
Senior Puisne Judge.

Decree of the Supreme Court granting Conditional 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.

M. MOHAMED MIYA of No. 212, Second Cross Street, Pettah,
Colombo *Petitioner*

vs.

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

M. F. DE S. JAYARATNE, Controller of Textiles, 106, Have-
lock Road, Colombo *Respondent-Appellant*

vs.

M. MOHAMED MIYA of No. 212, Second Cross Street,
Pettah, Colombo *Petitioner-Respondent.*

No. 76 of 1947.

20 In the matter of an application by the petitioner abovenamed for
Conditional Leave to appeal to His Majesty the King in Council against
the Decree of this Court, dated 2nd October, 1947.

This matter coming on for hearing and determination on the 27th
November, 1947, and the 19th January, 1948, before the Hon. Sir F. J.
Soertsz, Kt. K.C., Senior Puisne Justice, and the Hon. Mr. A. R. H.
Canekeeratne, K.C., Puisne Justice, of this Court, in the presence of Counsel
for the applicant and there being no appearance for the respondent.

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

(1) deposit with the Registrar of the Supreme Court a sum of Rs. 3,000
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).

No. 8
Decree of the
Supreme
Court
granting
Conditional
Leave to
Appeal to
the Privy
Council
19-1-48
—continued.

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 19th day of January, in the year of our Lord One thousand Nine hundred and Forty-eight and of our Reign the Twelfth.

Sgd. CLARENCE DE SILVA,
Registrar, Supreme Court.

No. 9

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No. 9
Application
for Final
Leave to
Appeal to
the Privy
Council
17-2-48

Application 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).

M. MOHAMED MIYA of No. 212, Second Cross Street, Pettah,
Colombo *Petitioner*

No. 76/497. *vs.*

M. F. DE S. JAYARATNE Controller of Textiles (appointed
under the Defence (Control of Textiles) Regulations), 106, 20
Havelock Road, Colombo..... *Respondent*

And

M. F. DE S. JAYARATNE, Controller of Textiles, 106, Have-
lock Road, Colombo *Respondent-Appellant*

vs.

M. MOHAMED MIYA of No. 212, Second Cross Street,
Pettah, Colombo..... *Petitioner-Respondent.*

The petition of the respondent-appellant abovenamed appearing by Clifford Trevor de Saram, his Proctor, sheweth as follows :—

1. That the respondent-appellant on the 19th day of January, 1948, 30
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 2nd day of October, 1947,

No.....

Supreme Court of Ceylon
Application No. 76 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

M. F. DE S. JAYARATNE, Con-
troller of Textiles (appointed
under the Defence (Control of
Textiles) Regulations), 106,
Havclock Road, Colombo.....*Respondent-Appellant*

AND

M. MOHAMED MIYA of No. 212,
Second Cross Street, Pettah,
Colombo.....*Petitioner-Respondent*.

RECORD
OF PROCEEDINGS
