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In the Privy Council.

No. 1 of 1949.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE OF A WRIT OF CERTIORARI.

BETWEEN—

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

(Petitioner) *Appellant*

— AND —

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

(Respondent) *Respondent*

CASE FOR THE APPELLANT.

RECORD.

1. This is an appeal from an Order of the Supreme Court of Ceylon dated the 8th October 1947 discharging with costs a rule nisi issued by the Supreme Court on the 21st March 1947 at the instance of the Appellant calling on the Respondent to show cause why a

p. 29

p. 11

mandate in the nature of a Writ of Certiorari should not issue with a view to quashing an Order made by the Respondent on the 10th
p. 10 March 1947 revoking the Appellant's licence under the Defence (Control of Textiles) Regulations 1945.

2. At all material times there existed in Ceylon a scheme for the rationing of textiles. This scheme was initiated in 1943 by Regulations made by the Governor pursuant to the Emergency Powers (Defence) Acts 1939 and 1940 as adapted modified and extended to Ceylon by Orders in Council. The Regulations in force at the time of the matters with which this appeal is concerned were the Defence (Control of Textiles) Regulations 1945. The Respondent at all material times was the person holding office as Controller of Textiles for the purposes of these Regulations. Among his powers under the Regulations were power to issue textile licences to dealers in textiles, it being an offence for any person to carry on business as a dealer of any class unless he was the holder of a textile licence authorising him to carry on such business; also the power to cancel any textile licence. The latter power, which is the one directly relevant on this appeal, was contained in Regulation 62 which was in the following terms:—

"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".

p. 4, l. 38 3. The Appellant at all material times had been carrying on business in partnership with one Shabandri Mohamed Hussain under the name and style S. Mohamed Hussain & Co. at 109/111,
p. 5, l. 1 Keyzer Street, Pettah, Colombo. A licence No. C/1873 authorising
p. 12, l. 26 the Appellant to carry on at that address business as a dealer and importer in textiles was duly issued to him pursuant to application dated the 6th July 1943 and had been in force ever since.

p. 13, ll. 9—47 4. The procedure under the scheme as far as a dealer was concerned was that he had to collect the appropriate number of coupons from any customer to whom he supplied textiles and in due course to account for the coupons so collected to the Respondent. For the latter purpose the Respondent established a Coupon Bank into which coupons were paid, and dealers were issued with a form of paying in book with paying in slips comprising foil and counterfoil for recording the number paid in. The dealer or some employee of his would enter in the foil and counterfoil the number of coupons being surrendered and would take the book and the coupons to the Bank. At the Bank there was a receiving clerk to take the paying in book and the coupons, count the latter and check the number against that entered in the foil and counterfoil of the paying in slip, and enter the number in a scroll book which the person paying in

signed or initialled. The receiving clerk then handed the paying in slip and the coupons to an assistant Shroff who checked the correctness of the number of coupons as counted by him and as recorded in the foil and counterfoil of the paying in slip, initialling the latter. At one time, up to the introduction in September 1946 of the receiving clerk's scroll book, the assistant Shroff had a register in which he entered the number of coupons surrendered as checked by him. The assistant Shroff then passed the paying in slip, but not apparently the coupons, to the Shroff who, after signing the foil and initialling the counterfoil, passed it to the Chief Clerk who in turn countersigned the foil and counterfoil, entered the figures in the register called the Credit Control Account, and detached the foil of the paying in slip. The paying in book was then returned to the dealer or his representative. The foil of the paying in slip was then passed to the ledger clerk who entered up the dealer's ledger account. It is important to observe that under this procedure the dealer or his representative, having parted with his paying in book to the receiving clerk, had no access to it at all until it was handed back to him after the appropriate foil had been detached.

5. As far as the Appellant was concerned from 1943 on everything worked satisfactorily, his books being regularly inspected and checked and signed by the Respondent's officers. p. 9, l. 40

6. Trouble was apparently first detected in the Respondent's office when in January, 1947, in the course of checking the ledger account of a certain dealer, it was found that there were discrepancies between the ledger account and the other records held. A check was then ordered of certain other dealers' accounts and discrepancies discovered in the case of four of them, including the Appellant. p. 12, l. 30

7. The first intimation of trouble received by the Appellant was a letter from the Respondent dated the 20th February 1947 but received at 12.0 a.m. on the 22nd February 1947. This was a prohibition, purporting to be under Regulation 33, forbidding the Appellant, except under stringent conditions, from purchasing or selling regulated textiles for one fortnight. At the same time on the 22nd February 1947 the Appellant was served with a letter from the Respondent asserting that on the 30th November 1946 and the 21st December 1946 the point values of the coupons surrendered according to the records of the receiving clerk, Shroff and assistant Controller were respectively 669 and 992 but according to the ledger account 5669 and 2992. The letter proceeded:— p. 7, l. 28 p. 8, l. 46

"On inspecting the corresponding paying in slips submitted p. 8, l. 24
"by you along with the coupons, it is found that interpolations
"have been made on these slips (on foils and counterfoils both)
"in figures as well as letters so as to show the bigger amounts

"as credited in the Ledger Accounts. Both the interpolations "and the original entries appear to be in the same handwriting.

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

"If you have any explanation to offer in respect of these "matters please send it in to me in writing on or before 4.0 p.m. "on Tuesday the 25th instant.

"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."

p. 9, p. 10, l. 5 — 8. A reply to this was sent to the Respondent on the 28th February 1947 by the Appellant's proctor, presumably after scrutiny of the documents and an interview between the Respondent and the Appellant's Counsel. Shortly summarised this reply asserted that the paying in slips containing interpolations were not in the handwriting of the Appellant or any of his employees; that the signature on the interpolation slips was not that of the Appellant's employee M. O. Alliyar who regularly did the paying in of the coupons; that in fact the paying in slips for the 30th November 1946 and the 21st December 1946 had been made out by the Appellant personally and signed by the said Alliyar and had been for the figures 5669 and 2992; that there had been substitution for those slips of the forgeries containing the interpolations.

p. 9, l. 27; p. 9, l. 30; p. 9, l. 15; p. 9, l. 23

p. 10 — 9. The next the Appellant heard of the matter was a letter from the Respondent dated the 10th March 1947 in which he stated "With reference to my letter No. CR.C. 1873/4369 of 22-2-47 and the "letter of 25-2-47 submitted by your lawyer, I find you are a person "unfit to hold a textile licence. I therefore order the revocation of "your licence under Regulation 62 with effect from 10-3-47." Consequential instructions were thereafter set out.

pp. 2—4 — 10. On the 12th March 1947 the Appellant filed in the Supreme Court of Ceylon his petition praying for a mandate in the nature of a Writ of Certiorari quashing the Respondent's said Order of the 10th March 1947. This petition was supported by the Appellant's affidavit of the same date asserting that the fraudulent interpolations had been made and could only have been made in the Respondent's office; that the allegation that the Appellant had procured or instigated the making of those interpolations was quite untrue; that serious criminal offences were involved implicating possibly one or more of his employees and that these ought to be properly investigated in appropriate criminal proceedings and were not within the ambit of the Respondent's powers under Regulation 62; that no proper opportunity had been given to the Appellant by

pp. 4—7; p. 5, l. 35; p. 5, l. 23; p. 5, l. 27; p. 6, l. 1, 25

way of an inquiry to test the working of a system under which such irregularities were possible or to sift the evidence against him as being implicated; that the Respondent was not acting *bona fide* in revoking the Appellant's licence rather than clearing up his own department; that the Respondent being an interested person in the matter could not properly conduct any necessary inquiry. The said affidavit exhibited the Respondent's letters, dated the 20th February 1947 and the 22nd February 1947, the letter from the Appellant's proctor dated the 25th February 1947 and the Respondent's letter of the 10th March 1947. p. 5, l. 42 p. 6, l. 40 pp. 7—10

11. By his affidavit in answer dated the 25th July 1947 the Respondent described the procedure of the Coupon Bank as hereinbefore set out, reiterated the deficiencies above mentioned and referred to the interpolations on the paying in slips both foil and counterfoil, the latter having been procured from the Appellant by one of the Respondent's Inspectors. He also stated that on discovery of the discrepancies he had deputed an Assistant Controller of Textiles to hold an inquiry, but did not suggest that any witnesses implicating the Appellant were called or that the Appellant had any opportunity of hearing or knowing what they had to say or of cross-examining them. Statements made by the Appellant, his partner and their employee were alleged to have been recorded, but these were not exhibited to the affidavit. The affidavit did however exhibit affidavits affirmed by two of the Receiving Clerks of the Bank, the chief Assistant Shroff and the Shroff, all dated the 25th or the 26th July 1947. The Receiving Clerks verified their signature on the Scroll book and asserted that the entries there correctly recorded the number of coupons surrendered on the 30th November 1946 and the 21st December 1946 respectively. The chief Assistant Shroff verified his initials on the two paying in slips and the figures entered by him in the Shroff's register on the second date in question, and stated that he would not have initialled the foil and counterfoil unless they correctly recorded the number of coupons surrendered and counted by him, and asserted that the interpolations on the two paying in slips had been made after he had counted the coupons and checked and initialled the slip. The Shroff dealt only with the earlier of the two dates in question and, after identifying his initials on the paying in slip, and referring to the figures appearing in his register, asserted that the interpolations on the paying in slip had been made since he had entered up his register. It is to be noted that all this evidence was recorded long after the Respondent asserted that he had reason to believe that the Appellant had got the interpolations made, yet even so not one of these witnesses asserted that the Appellant had anything to do with the matter at all. No affidavit by the Chief Clerk or the ledger clerk was put in The Respondent's affdavit p. 12—15 p. 13, ll. 9—47 p. 14, ll. 10—20 p. 14, l. 21 p. 14, l. 40 p. 14, l. 41 pp. 17—20 p. 16, p. 15 p. 18, ll. 20—29 p. 19, l. 35— p. 20, l. 3 p. 16, l. 31— p. 17, l. 3 p. 17, l. 4 p. 17, l. 8 p. 15, l. 35 p. 15, l. 37 p. 16, l. 4 p. 20

further exhibited a report dated the 6th February 1947 from the Government Examiner of Questioned Documents stating that, as regards the later paying in slip, there was nothing definite to indicate any additions at all, while as regards the first paying in slip, the slope and size of the letters in the words "five thousand" were different from those in the words "six hundred and sixty-nine". This seems to be in conflict with the Respondent's assertion in his
p. 8, l. 28 letter of the 22nd February 1947 that "both the interpolations and
pp. 21—2 "the original entries appear to be in the same handwriting". Finally the Respondent's affidavit exhibited photographic enlarge- 10
ments of the two paying in slips in question.

12. On this evidence the Appellant's application was argued in the Supreme Court before Mr. Justice Canekeratne on the 26th
pp. 23—8 September 1947. In his judgment delivered on the 8th October 1947
p. 27, l. 2 the learned Judge after recording the history stated that "one of "the main questions the Respondent had to decide was, did the "firm surrender to the Coupon Bank 5669 coupons on November "30, 1946 and 2992 coupons on December 21, 1946". On this he referred to the records of the bank and the evidence of the witnesses
p. 27, l. 10 corroborating them, and added "on the other hand were the state- 20
"ments made by the Petitioner, Mohamed Hussain and Alliyar. "The Respondent had two versions before him at the time of the "making of the order. He had also the signature of Alliyar to the "Scroll book on both occasions, the signature of Alliyar to the two "foils, and the books in the office. It is not surprising that the "Respondent did come to the conclusion that there was no delivery "of 5669 coupons and 2992 coupons". This is somewhat misleading in that the statements made at the so-called inquiry by the Appellant, Mohamed Hussain and Alliyar were never produced and the learned Judge could only have surmised what they 30
contained, while the alleged signature of Alliyar on the paying in slips in question had all along been in dispute and there was no
p. 27, l. 25 evidence that he accepted the signature in the Scroll book. Having thus concluded that there was in fact no delivery by the firm of 5,669 coupons or 2,992 coupons, the learned Judge expressed the view that the firm alone get the benefit from the extra credit, thus ignoring altogether what was asserted at the hearing, and not challenged, that the essence of the fraud was to free used coupons
p. 27, l. 34 which were saleable readily for R. 1/- each. The learned Judge also stressed the point that the firm ought to have noticed the interpola- 40
tion on the counterfoils when the paying in book was returned to them. On these grounds the learned Judge held that the Respondent could reasonably come to the conclusion that the Appellant's firm got the interpolations made, though he did not indicate whether it was the Appellant, or his partner Mohamed Hussain (who was not a licence holder) or some dishonest employee who was responsible.

13. The learned Judge was pressed to follow the decisions of the Supreme Court in the cases of the other three dealers whose licences had been revoked by the Respondent at about the same time. The first of these—application Number 75 of 1947—came before Howard C.J. on the 12th September 1947 and he delivered judgment on the 19th September 1947 directing that the Respondent's order be quashed. The Appellant will respectfully rely on this judgment which proceeded on the basis that, "inasmuch "as the grounds on which the Respondent had come to the conclu- "sion that the Petitioner had got the interpolations made and "contrived to obtain in the Ledger Account credit for a bigger "amount than he was entitled to on the basis of the coupons "surrendered by him, had not been disclosed to the "Petitioner, the latter had not been given a fair opportunity of "stating his case. Moreover it would appear that the Respondent "condemned the Petitioner merely on suspicion. If the grounds "were as stated in Document B" (which was in substantially the same terms as the Respondent's letter of the 22nd February 1947 in the present case) "the Respondent has not acted judicially. On the "other hand if the Respondent cancelled the licences because the "Petitioner employed . . . a dishonest employee, the Respondent "cannot be said to have acted judicially inasmuch as this was not "the ground on which he purported to act and moreover the "Petitioner has not been given an opportunity of stating his case "if such was the ground on which action was taken". The second case—application Number 76—came before Dias J. on the 30th September 1947 and in his judgment, on which the Appellant will rely, the learned Judge pointed out that there was no evidence to show that the Petitioner was either privy to or aided or abetted the interpolations; if therefore his decision that the dealer was unfit to hold a licence was based on the allegation that the Petitioner had got the interpolations made and contrived to obtain an increased credit in his ledger account, it was based on nothing at all; if there were any other grounds for the decision apart from those disclosed, the Respondent had not acted judicially in withholding those grounds. The learned Judge further expressed the view that the Respondent's jurisdiction under Regulation 62 depended upon the existence of the fact or facts which caused him to have reasonable grounds to believe that a dealer was unfit to be allowed to continue as a dealer, and that the existence or non-existence of such reasonable grounds had to be examined objectively. The learned Judge concluded by saying that he thought the judgment of Howard C.J. was indistinguishable either on grounds of fact or of law, but that he had attempted without reference to that judgment to come to his own independent conclusion, and having done so, found himself in entire agreement with the Chief Justice. In the third case—

application Number 61 of 1947—Wijeyewardene J. on the 1st October 1947 contented himself with saying that the case before the Chief Justice was indistinguishable. The Appellant respectfully submits that the present case is entirely indistinguishable on its facts from the other three and that Canekaratne J. erred in saying
p. 25, l. 46 that "it was not disputed that the facts of the last case and of the "present were not similar and that there was a distinction" which the learned Judge did not in any way develop. The Appellant has always contended as the judgment records that his Counsel did,
p. 26, l. 2 that in essentials the cases were on all fours and uniformity in the administration of justice demanded uniform decisions.

14. It was common ground in all four cases that, in the light of the decision of a Full Bench of the Supreme Court in *Abdul Thassim v. Edmund Rodrigo* (1947) 48 N.L.R. 121, the requirement of Regulation 62 that the Respondent must have reasonable grounds for his belief in a dealer's unfitness indicated that he had to act judicially and was not merely being called upon to exercise administrative functions. In the present case the circumstances were so peculiar, involving not merely the commission of serious criminal offences, but also the certainty that these were committed in the Respondent's own Department and by his own officers in relation to documents of which they alone at the material time had custody, that, in the Appellant's submission a specially high standard was demanded, it being important not merely that justice should be done but should manifestly appear to be done. If the Respondent had initiated criminal prosecutions and had acted on the verdict of a criminal Court, or if he had appointed some entirely independent official to make a full and impartial examination of the conduct not only of dealers but also of his own officers and acted on his report, nobody could have complained. Conducted as it was however by the Respondent the so-called inquiry fell short of what natural justice demands and did not in any case give any ground for implicating anyone apart from the Respondent's own officers.

15. Being dissatisfied with the said decision of Canekeratne J. and the consequential Order of the Supreme Court dated the 8th
p. 29 October 1947 discharging the rule nisi with costs, the Appellant duly
p. 31 applied for and was granted by the Supreme Court on the 5th
p. 34 February 1948 conditional leave to appeal therefrom to His Majesty in Council, and this leave was made final by the Supreme Court on the 9th March 1948.

16. The Appellant humbly submits that the said judgment and decree of the Supreme Court dated the 8th October 1947 ought to be set aside, and a mandate in the nature of a Writ of Certiorari ought to issue for the purpose of quashing the Order of the Respondent dated the 10th March 1947 revoking the Appellant's textile licence, for the following amongst other

REASONS.

1. BECAUSE in the special circumstances of the case the principles of natural justice demanded that proper criminal process should be a condition precedent for the exercise by the Respondent of his jurisdiction under Regulation 62 of the Defence (Control of Textiles) Regulations 1945;

2. BECAUSE in the special circumstances of the case the principles of natural justice demanded that inquiry into forgeries committed in the Coupon Bank by officers of the Respondent's Department should be conducted by an independent impartial tribunal and not by the Respondent himself;

3. BECAUSE the jurisdiction of the Respondent under the said Regulation 62 depended upon there being in fact reasonable grounds for believing the allegation that the Appellant was privy to or had aided or abetted the commission of the forgeries in question;

4. BECAUSE there was in law no evidence in support of the said allegation and therefore no reasonable grounds for believing it;

5. BECAUSE the Respondent did not disclose to the Appellant reasonable grounds for believing the said allegation so as to afford to the Appellant an opportunity of testing, criticising or meeting such grounds;

6. BECAUSE the Respondent did not disclose to the Appellant the persons in the Respondent's Department responsible for making the said forgeries so as to enable the Appellant to refute or rebut the allegation that he had been conspiring with them;

7. BECAUSE the evidence relied on by the Respondent was suspect evidence by officers from his own Department which did not come into existence until after he had made the order in question and the Appellant was not therefore afforded any opportunity to correct or contradict what they said;

8. BECAUSE, as far as the relevant paying in slips were concerned, there was no evidence that any part of the words or figures written on them was in the handwriting of the Appellant or of his employee Alliyar;

9. BECAUSE, even if the said Alliyar was in any way implicated, it was not and never purported to be a ground of the Respondent's decision that he had employed a dishonest servant;

10. BECAUSE the Respondent, in his position as virtual judge as well as prosecutor in relation to a criminal charge, ought to have refrained from acting unless the charge was established beyond reasonable doubt;

11. BECAUSE the decision of the Respondent was contrary as above specified to natural justice and ought to be quashed;

12. BECAUSE the facts of the present case were in all essential respects indistinguishable from those in applications No. 75, 76 and 61 of 1947 in the Supreme Court of Ceylon and a similar decision is therefore demanded;

13. BECAUSE the decisions of Chief Justice Howard, Mr. Justice Dias and Mr. Justice Wijeyewardene in the said applications No. 75, 76 and 61 were right and ought to be applied;

14. BECAUSE the decision of Mr. Justice Canekeratne in the present case was wrong and ought to be reversed.

STEPHEN CHAPMAN.

No. 17 of 1949.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

NAKKUDA ALI

— *v.* —

M. F. de S. JAYARATNE.

CASE FOR THE APPELLANT.

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