

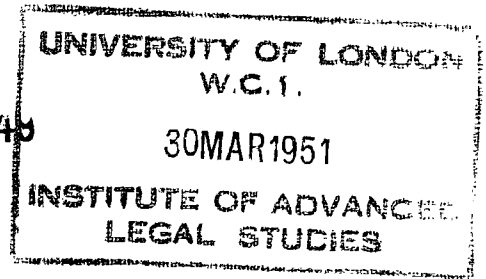
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No. 18

1949



Supreme Court of Ceylon
Application No. 75 of the year 1947.

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

In the matter of 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

BAPU MIYA MOHAMED MIYA of No. 12,
Charles Circus, Alfred Place, Colpetty, Colombo.....*Petitioner-Respondent.*

RECORD
OF PROCEEDINGS

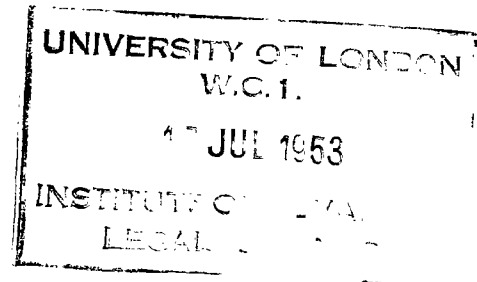
INDEX

Serial No.	Description of Document	Date	Page
1	Application of Petitioner for a Mandate in the nature of a Writ of <i>Certiorari</i> ...	25th February, 1947	1
	Motion ...		1
	Petition ...		2
	Affidavit ...		5
	Annexure A1 (Controller's Order) ...		7
	Annexure A2 (Controller's Order) ...		8
	Annexure B (Letter) ...		9
	Annexure C (Letter) ...		10
	Annexure D (Controller's Order) ...		11
2	Order of the Supreme Court ...	26th February, 1947	12
	Affidavit of Respondent ...	25th July, 1947	14
	Annexure A (Affidavit) ...		17
	Annexure B (Affidavit) ...		18
	Annexure C (Affidavit) ...		20
	Annexure D (Affidavit) ...		21
	Annexure E (Report of Examiners of Questioned Documents) ...		23
	Annexure F (Foil and Counterfoil No. 7144) ...		25
	Annexure G (Foil and Counterfoil No. 7373) ...		26
4	Order of the Supreme Court ...	19th September, 1947	27
5	Decree of the Supreme Court ...	19th September, 1947	34

INSTITUTE OF ~~PLANNING~~
 LEGAL STUDIES,
 25, RUSSELL SQUARE,
 LONDON,
 W.C.1.

No.....

Supreme Court of Ceylon
Application No. 75 of the year 1947.



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

In the matter of 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

BAPU MIYA MOHAMED MIYA of No. 12,
Charles Circus, Alfred Place, Colpetty, 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 Man-
date in the
nature of a
Writ of
Certiorari
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 **BAPU MIYA MOHAMED MIYA** of No. 12, Charles Circus,
Alfred Place, Colpetty, Colombo..... *Petitioner.*

vs.

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

I file my appointment as a Proctor for the petitioner together with
the Petition of Application (with documents marked " A " 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 above-
named, the Controller of Textiles, appointed as above-named, 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.

30 Colombo, 25th February, 1947. Sgd. **K. SHANMUGARAJAH**,
Proctor for Petitioner.

(Petition)

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON

To

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

On this 25th day of February, 1947.

The Petition of the petitioner abovenamed appearing by C. M. Kumaravetpillai and his Assistant, Kumaravetpillai Shanmugarajah his 10 Proctors, states as follows :—

1. The petitioner abovenamed was granted textile licenses Nos. 691/C-691 and 696/C696 under the Defence (Control of Textiles) Regulations and functioned thereunder as a licensed dealer and importer in textiles under the name and style of H. A. N. Mohamed & Company at Nos. 209-211, Main Street, Colombo, and at Nos. 173-175, Second Cross Street, 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 40,000 points in respect 20 of the textile coupons surrendered on behalf of the petitioner to the Textile Coupon Bank on 30th November, 1946, and 18th December, 1946.

3. By Orders Nos. CR. C. 696/C 696 and CR. C. 691/4324 both dated 18th February, 1947 (marked "A1" and "A2" respectively and filed herewith) the respondent abovenamed, purporting to act under Regulation No. 33 of the Defence (Control of Textiles) Regulations, 1945, prohibited the petitioner from purchasing or selling any regulated textiles from or to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town.

4. By Letter No. CR. C. 691/4324 of 18th February, 1947 (marked 30 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.

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* :—

40

(a) that the petitioner denied all and singular the allegations made by the respondent against the petitioner in the aforesaid letter No. CR. C. 691/4324 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 could not at law revoke the petitioner's licence until the criminal offences were investigated into and disposed of in appropriate proceedings ;

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

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

(d) that the respondent was not acting *bona fide* in seeking to revoke 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. 691/4324 dated 21st February, 1947 (marked letter " D " and also filed herewith) made order, revoking both the petitioner's licences, under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945, with effect from 21st February, 1947.

7. That by the aforesaid Order of the respondent revoking the textile licences of the petitioner, the petitioner is unable to dispose of stocks in hand of the estimated value of about Rs. 400,000, 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 transits of the estimated value of about Rs. 175,000 or to ship to this Island, textiles of the estimated value of about Rs. 3,300,000 for which irrevocable letters of credit have been opened through Banks, or to accept delivery of a quantity of further textiles of the estimated value of about Rs. 4,750,000 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.

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

8. The petitioner humbly submits :—

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

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

(c) that during the last eighteen months the petitioner has surrendered to the Textile Coupon Bank over two million textile coupons, and the alleged shortage is in respect of only two items of surrender aggregating to 40,000 points of textile coupons which the petitioner had sent for 10 surrender to the Textile Coupon Bank ;

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

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

(f) that the respondent abovenamed is in the circumstances referred to above, an interested person and had therefore no jurisdiction to act 20 under Regulation 62 aforesaid.

WHEREFORE the petitioner prays that Your Lordships' Court be pleased—

(a) to issue a Mandate in the nature of a Writ of Certiorari quashing the aforesaid Order made by the respondent abovenamed, contained in his letter to the petitioner, dated 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 ; 30

(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,
Proctor for Petitioner.

(Affidavit)

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

To

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

I, Bapu Miya Mohamed Miya of No. 12, Charles Circus, Alfred Place,
Colpetty, Colombo, not being a Christian do hereby solemnly sincerely
10 and truly declare and affirm as follows :—

1. I am the petitioner abovenamed.

2. I was granted textile licences Nos. 691/C.-691 and 696/C.-696
under the Defence (Control of Textiles) Regulations and I functioned
thereunder as a licensed dealer and importer in textiles under the name
and style of H. A. N. Mohamed & Company at Nos. 209-211, Main Street,
Colombo, and at Nos. 173-175, Second Cross Street, 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 40,000 points in respect
20 of the textile coupons surrendered on behalf of me the petitioner to the
Textile Coupon Bank on 30th November, 1946, and 18th December, 1946.

4. By Orders Nos. CR. C. 696/C 696 and CR. C. 691/4324 both dated
18th February, 1947 (marked "A1" and "A2" respectively and filed
herewith) the respondent abovenamed, purporting to act under Regula-
tion No. 33 of the Defence (Control of Textiles) Regulations, 1945, pro-
hibited me from purchasing or selling any regulated textiles from or to
any person without the previous written authority of the Assistant
Controller of Textiles, Colombo Town.

5. By Letter No. CR. C. 691/4324 of 18th February, 1947 (marked
30 letter "B" and also herewith filed) the respondent abovenamed requested
me to offer any explanation I may have in respect of the allegations set
out therein and informed me that if the allegations in paragraph 1 (2)
thereof were as set out, the respondent abovenamed would regard me as
a person unfit to continue to hold a textile licence and that the respondent
proposed accordingly to revoke my textile licence.

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

(a) that I denied all and singular the allegations made by the re-
40 spondent against me in the aforesaid letter No. CR. C. 691/4324 of 18th
February, 1947 ;

(b) that as the allegations made by the respondent abovenamed
against me disclosed criminal offences of a very grave nature which might

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

or might not have been committed by one or more of my employees acting under the instigation of or in concert with the officers working under the control and supervision of the respondent abovenamed, the respondent could not at law revoke my licence until the criminal offences were investigated into and disposed of in appropriate proceedings ;

(c) that the allegations of fraud made by the respondent ought properly to be made against the officers of his Department, who could have exclusively perpetrated the fraud in respect of the textile coupons, given for surrender on my behalf, to one of my employees, part of whose duties, it was to surrender from time to time textile coupons to, and obtain 10 receipts therefor from the Textile Coupon Bank which was administered under the control and supervision of the respondent abovenamed ;

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

7. Without giving me an opportunity of an inquiry to enable me to establish my innocence and to show how the fraud in respect of the textile coupons could have been committed by the officers working under the respondent abovenamed, by reason of the grave defects which were 20 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. 691/4324 dated 21st February, 1947 (marked letter "D" and also filed herewith) made order, revoking both my licences, 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 my textile licences, I, the petitioner, am unable to dispose of stocks in hand of the estimated value of about Rs. 400,000, or to clear from His Majesty's Customs at Colombo, textiles imported by me of the estimated value of 30 about Rs. 200,000 or to arrange for the landing in the port of Colombo, of textiles in transit of the estimated value of about Rs. 175,000 or to ship to this Island, textiles of the estimated value of Rs. 3,300,000 more or less for which irrevocable Letters of Credit have been opened through Banks, or to accept delivery of a quantity of further textiles of the estimated value of about Rs. 4,750,000 for which I have 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 me, not to allow me to clear textiles which have been imported and landed in 40 the port of Colombo.

9. I, the petitioner, humbly submit :—

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

- (c) that during the last eighteen months I have surrendered to the Textile Coupon Bank over two million textile coupons, and the alleged shortage is in respect of only two items of surrender aggregating to 40,000 points of textile coupons which I the petitioner had sent for surrender to the Textile Coupon Bank ;
- (d) that the said allegations disclose criminal offences of a very grave nature, like forgery, which the respondent abovenamed had no jurisdiction to determine, with or without an inquiry, under cover of Regulation 62 of the Defence (Control of Textiles) Regulations, 1945 ;
- (e) that the respondent in revoking my licences was not exercising jurisdiction *bona fide* under Regulation 62 aforesaid, for the reasons abovementioned ;
- (f) that the respondent abovenamed is in the circumstances referred to above, an interested person and had therefore no jurisdiction to act under Regulation 62 aforesaid.

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

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. B. MAHAMUD MIYA

Before :

Sgd.

C. O.

(Annexure A1)

Control of Textiles Office,
P. O. Box 538, Colombo.

My. No. CR. C. 691/4324 of 18-2-47.

MESSRS. H. A. N. MOHAMED & Co.,
209/211, Main St., Colombo.

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 ;

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

- (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,
Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles. 10

(Annexure A2)

Control of Textiles Office,
P. O. Box 538, Colombo.

My No. CR. C. 696/C. 696 of 18-2-47.

MESSRS. H. A. N. MOHAMED & Co.,
173/175, 2nd Cross Street, Colombo.

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, 30
Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles.

(Annexure B)

Control of Textiles Office,
P. O. Box No. 538, Colombo.

My No. CR. C. 691/4324 of 18th February, 1947.

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari.
25-2-47
—continued.

MESSRS. H. A. N. MOHAMED & CO.,
209/211, Main Street, Colombo.

Gentlemen,

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

- 10 (1) Whereas according to the scroll book kept by the Counter Clerk who receives coupons from depositors, and according to the registers kept by the Shroff and the Assistant Controller respectively, the number of coupon points surrendered by you on the undermentioned dates were as shown in column (2) below, your ledger account has been credited on the same dates with amounts as shown in column (3) :

	(1) Dates	(2) Points surrendered according to registers kept by the Counter Clerk, Shroff & Asst. Controller	(3) Points credited in your ledger account
20	On 30-11-46	1,500	21,500
	On 18-12-46	2,000	22,000

- (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
30 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.

If that is so, I have to regard you as a person unfit to continue to hold a license 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.

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

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

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

(Annexure C)

5, Ferry Street, Colombo,
Ceylon. 10
20th February, 1947.

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

Dear Sir,

With reference to your letter No. CR. C. 691/4324 of 18th February, 1947, addressed to my client, carrying on business under the name and style of H. A. N. Mohamed & Co., of Nos. 209-211, Main Street, Pettah, Colombo, I am instructed to submit :

(i.) that my client denies all and singular the allegations made against him in your letter ; 20

(ii.) that an inspection of the relevant documents and registers, by his lawyers, reveal certain facts which go to show that there has been a colossal fraud committed by the officers of your department in respect of textile coupons surrendered to the Textile Coupon Bank by my client. The commission of the fraud was made possible owing to an extremely faulty coupon banking system introduced and worked by your department. It is not unlikely that the officers of your department may have corrupted the employee of my client—one Peter Fernando—in the commission of the fraud, though it cannot be stated with any certainty that there are interpolations in all foils and counterfoils of the pay-in-slips or that addi- 30
tions were made therein after these documents had been signed or initialled by the officers of your department ;

(iii.) that my client has surrendered to your Coupon Bank over two million textile coupons within the last 18 months and he assures you that he was not aware or had any cause to be aware of anything amiss in the work which was entrusted to his employee, Peter Fernando. Peter Fernando and my client were questioned on the 13th instant by officers of your department. Peter Fernando was also questioned by my client later the same day. He said, that he could give no explanation in the absence of the documents which were with your officers at the time. On 40
subsequent dates Peter Fernando has not turned up for work and my client is unable to trace him ;

(iv.) that my client urges that it would be unjust and unfair to revoke his licence 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 ;

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

(v.) that so far as my client is concerned all the textile coupons as shown in your ledger were duly surrendered by him and his books show such surrender supported by the signatures and initials of your officers on the counterfoils of the paying-in-slips returned to him after the textile coupons were sent for surrender to the Coupon Bank ;

(vi.) 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 you do not have the necessary machinery to make an investigation into the charges of such a serious nature.

20 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. H. A. N. Mohamed & Co.

(Annexure D)

Control of Textiles Office,
P. O. Box 538, Colombo.

30 My No.C R. C. 691/4324 of 21-2-1947.

MESSRS. H. A. N. MOHAMED & Co.,
Colombo.

Sirs,

With reference to my letter No. CR. C. 691/C. 691 of 18-2-47 and the letter of 20-2-47 submitted by your lawyers, I find you a person unfit to hold a textile licence. I therefore order the revocation of all the licences held by you to deal in textiles under Reg. 62 of the Defence (Control of Textiles) Regulations, 1945, with effect from 21-2-1947, *i.e.* your Licences No. 691/C. 691 and No. 696/C.-696.

No. 1
Application
of Petitioner
for a Man-
date in the
nature of a
Writ of
Certiorari
25-2-47
—continued.

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

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

- (1) you surrender the remaining coupons in your hand and the coupons you obtain by the sales with my sanction ; 10
- (2) the transferee surrenders the coupons for the goods transferred.

Possession of the goods after 15 days will be regarded as unlicensed possession, and the goods will be seized and a prosecution entered.

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

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

No. 2.

Order of the Supreme Court.

No. 75. 20

SUPREME COURT MINUTE PAPER ON APPLICATIONS.

Subject : Writ of Certiorari on Controller of Textiles.

Date : 25-2-47.

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. SUNTHARALINGAM, for the petitioner.

ORDER

Date : 26-2-47.

30

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, and referred to in paragraph 6 of the petition, pending the hearing and determination of the application.

Sgd. C. TOUSSAINT,
Bench Clerk.

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON

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

BAPU MIYA MOHAMED MIYA of No. 12, Charles Circus,
Alfred Place, Colpetty, Colombo *Petitioner.*

No. 75. vs.

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

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.
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
20 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
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 the Court,

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

30 The 26th day of February, 1947,

No. 3
Affidavit of
Respondent
25-7-47

No. 3.

Affidavit of Respondent.

**IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON.**

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

BAPU MIYA MOHAMED MIYA of No. 12, Charles Circus,
Alfred Place, Colpetty, Colombo*Petitioner.*

No. 75.

vs.

10

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

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

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

2. Upon an application dated the 5th July, 1943, made by the
petitioner, he was licensed by the Controller of Textiles to carry on ²⁰
business in textiles at No. 209-211, Main Street, Pettah, and No. 173-175,
Second Cross Street, Pettah, in Colombo, under Licences Nos. 691/C-691
and 696/C-696.

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 surrendered according to the registers kept by the
Receiving Clerks and Shroff and the Chief Clerk of the Coupon Bank.
As there was reason to suspect that similar discrepancies pointing to ³⁰
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 para. 6
thereof.

4. The procedure adopted at the said Coupon Bank of my depart-
ment 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.

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

- (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.
- 10 (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 counter-foil he enters in the scroll book the number of the points so received and obtains the depositor's signature or initials to the said entry in the scroll book. The said scroll book has been maintained since September, 1946.
- (d) The paying-in-slip in both foil and counterfoil together with the coupons are thereafter passed on by the receiving clerk to the Assistant Shroff who in turn checks the correctness of the number of coupons and of the particulars in the paying-in-slip, initials the paying-in-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.
- 20
- (e) The shroff records in a register kept by him the amount of the points as appearing in the foil and counterfoil of the pay-in-slip and after affixing his signature to foil and initialling the counter-foil 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.
- 30
- (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 :—
- 40
- (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 ;

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

- (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) Dates	(2) Points surrendered according to registers kept by Asst. Shroff Receiving Clerk, Shroff & Chief Clerk	(3) Points credited in Petitioner's Ledger Account	10
30-11-46	1,500	21,500	
18-12-46	2,000	22,000	

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. 20

8. I annex hereto marked " A ", " B ", " C " and " D " affidavits of Kuruppu Appuhamilage David Perera, Stephen Gomis Abeysinghe Jayawardena, Sepala Rajapakse and Uragoda Piyasiri Perera respectively, the Shroff, Chief Assistant Shroff and two of the Receiving Clerks of the Textile Coupon 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 " E " a true copy of a report dated the 6th February, 1947, of the Government Examiner of Questioned Documents in respect of the foils and counterfoils and referred to in paragraph 7 hereof and I annex marked " F " and " G " photographic enlargements of the said foils and counterfoils.

10. When the discrepancy was detected I deputed an Assistant Controller of Textiles to hold an inquiry and after considering the statements recorded by him among others of the petitioner B. Mohamed, Peter Fernando 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 accord- 40

ingly 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.

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

Signed and affirmed to at Colombo

on this 25th day of July, 1947 : Sgd. M. F. DE S. JAYARATNE.

Before me :

Sgd. (Illegibly)
A Justice of the Peace.

—————
(Annexure A)

10 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).

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

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

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

3. The paying-in-slips in foil and counterfoil are passed on to me
by the Chief Assistant Shroff. I verify that the particulars on both foil
and counterfoil tally and thereafter enter the particulars in a register
kept by me. After checking the entries in my register, I affix the serial
numbers on the foil and counterfoil. I initial the counterfoil and sign
30 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. 7144.

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

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

counterfoil bearing serial No. 7144 and the discrepancies are as set out in paragraph 6 of the affidavit of the Textile Controller dated the 25th July, 1947.

6. I affirm that—

- (a) the letters “ twenty ” and the figure “ 2 ” in the number “ 21500 ” in both foil and counterfoil of paying-in-slip No. 7144 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,

10

Before me :

Sgd. D. B. KANNANGARA.

A Justice of the Peace.

(Annexure B)

**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' 20
Ordinance (Cap. 6).

BAPU MIYA MOHAMED MIYA of No. 12, Charles Circus
Alfred Place, Colpetty, Colombo*Petitioner.*

No. 75. *vs.*

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

I, STEPHEN GOMIS ABEYSINGHE JAYAWARDENA of Kada-
watte do hereby solemnly, sincerely and truly affirm and declare as
follows :—

30

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

2. The procedure until about August, 1946, was for the receiving clerks to pass on the coupons and the paying-in slips 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.

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

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 10 Coupon Bank is as set out in paragraph 4 thereof.

5. I identify my initials on the foil and counterfoil of slips Nos. 7144 and 7373.

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 in the foil and counterfoil of paying-in slip No. 7373 of 18-12-46 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. 7373 in the Shroff's register. The 20 entry shows that 2,000 coupons were surrendered whereas the relative foil and counterfoil now show the amount as 22,000.

7. I further affirm that—

(a) the letters "twenty" and the figure "2" in the number "21500" in both foil and counterfoil of paying-in slip No. 7144 and

(b) the letters "twenty" and the first figure "2" in the number "22000" in both the foil and counterfoil of paying-in slip No. 7373.

have been inserted or interpolated since I counted the coupons surrendered, 30 checked the paying-in slips initialled or signed them, and further made the relative entry in the Shroff's register in respect of paying-in slip No. 7373.

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

Sgd. S. G. A. JAYAWARDANA.

Before me :

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

(Annexure C)

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

BAPU MIYA MOHAMED MIYA of No. 12, Charles Circus,
Alfred Place, Colpetty, Colombo *Petitioner.*

No. 75. vs.

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

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

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

2. I have perused the affidavit dated 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. 20

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

- (a) to count the coupons surrendered by the 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 re-
ceiving clerks at the counter was introduced, and thereafter my duties as
receiving clerk are : 30

- (a) to count the coupons surrendered by a dealer ;
- (b) to check the particulars entered in the foil and counterfoil of the
paying-in slip ;
- (c) to enter the following particulars in the scroll book :—
 - (i) the date ;
 - (ii) the licence number of the dealer ;
 - (iii) the dealer's name ;
 - (iv) the number of coupons surrendered ;
 - (v) receiving clerk's signature ;
 - (vi) surrenderer's signature or initials ; 40

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

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

5. I affirm that the relative entries made in the scroll book as on the 30th November, 1946, in which it has been entered that Messrs. H. A. N. Mohamed & Co. have paid in 1,500 coupons points are in my handwriting. I identify my signature in the scroll book and affirm that the depositor's initials in the scroll book were affirmed in my presence after all entries had been made by me. I also identify my signature on
10 the counterfoil of the paying-in slip bearing No. 7144.

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 the dealer on the 30th November, 1946.

7. The letters "twenty" and the figure "2" in the figures "21500" in both foil and counterfoil of paying-in slip No. 7144 have been interpolated since the coupons were surrendered to me and since the entries were made by me in the scroll book and signed by both me and the depositor.

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

Sgd. S. RAJAPAKSE.

Before me :

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

—————
(Annexure D)

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

BAPU MIYA MOHAMED MIYA of No. 12, Charles Circus,
Alfred Place, Colpetty, Colombo *Petitioner.*

No. 75. *vs.*

M. F. DE S. JAYARATNE, Controller of Textiles (appointed
under the Defence (Control of Textiles) Regulations 106,
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
40 Department and have been so employed since the 4th February, 1946.

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

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

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

- (a) to count the coupons surrendered by a dealer ;
- (b) to check the particulars entered in the foil and counterfoil of the paying-in slip ; and
- (c) thereafter, if correct, to pass the coupons and the paying-in slip both foil and counterfoil to the Assistant Shroff 10

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

- (a) to count the coupons surrendered by a dealer ;
- (b) to check the particulars entered in the foil and counterfoil of the paying-in slip ;
- (c) to enter the following particulars in the scroll book—
 - (i) the date ;
 - (ii) the licence number of the dealer ;
 - (iii) the dealer's name ; 20
 - (iv) the number of coupons surrendered ;
 - (v) receiving clerk's signature ;
 - (vi) surrenderer's signature or initials.
- (d) after making the above entries to sign the counterfoil of the pay-in slip, and to pass the coupons and the paying-in slip both foil and counterfoil to the Assistant Shroff.

5. I affirm that the relative entries made in the scroll book as on the 18th December, 1946, in which it has been entered that Messrs. H. A. N. Mohamed & Co. have paid in 2,000 coupon points are in my handwriting. I identify my signature in the scroll book and affirm that the depositor's initials in the scroll book were affixed in my presence after all entries had been made by me. I also identify my signature on the counterfoil of the paying-in slip bearing No. 7373. 30

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 the dealer on the 18th December, 1946.

7. The letters "twenty" and the figure "2" in the first figure "22000" on both foil and counterfoil of paying-in slip No. 7373 have been interpolated since the entries were made by me in the scroll book and signed by both me and the depositor.

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

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

Sgd. P. PERERA.

Before me :

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

10

(Annexure E)

Report No. 32 (H 58/46)
Office of the Government Analyst,
Colombo, 22nd February, 1947.

The Controller of Textiles, sent me on 21-2-47 through Mr. K. Mahendra, Asst. Controller of Textiles, the paying-in book of H. A. N. Mohamed & Co. for examination of the credit forms Nos. 7144 of 30-11-46 and 7373 of 18-12-46.

No. 7144 of 30-11-46

In the paying-in slip and counterfoil the word "Twenty" has been cramped-in before "one thousand". "One thousand five hundred only" has been written freely and well spaced apart.

In the total of the paying-in slip the terminal stroke of "2" lies on top of "1" showing that "2" had been written after "1", when it was dry.

No. 7373 of 18-12-46

In the counterfoil "Twenty" appears cramped, when compared to the spacing in "two thousand only". The downstroke of "y" "Twenty" probably lies on top of the initial stroke of "t" of two.

30

The Textile Controller,
Colombo,

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

(Annexure F.)

7144

7144

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

ASST. CONTROLLER OF TEXTILES
(DISTRIBUTION OFFICE)
Textile Control Dept.
30 NOV. 1946

A/c. No. 691/C691 Date, 30-11-1946.
COLONBO.

For Credit of H. A. N. Mohamed & Co.

Twenty one thousand five hundred only

Coupons.

Particulars	Signed Illegibly
Consumer Coupons 21500	Receiving Clerk
Special ..	Signed Illegibly Shroff
Coupon Equivalent Documents	
Total 21500	Signed Illegibly Staff Assistant

Textile Control Department

Credit Form.

A/c. No. 691/C691.

Date, 30-11-1946

Paid in to Credit of H. A. N. Mohamed & Co.

Twenty one thousand Five Hundred only Coupons.

Particulars	Signed Illegibly
Consumer Coupons 21500	Shroff Signed Illegibly
Special ..	By Signed Illegibly
Coupon Equivalent Documents	Ledger Clerk Signed Illegibly
Total 21500	Signed Illegibly Staff Assistant Folio 224

(Annexure G.)

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

7373

7373

Credit Form.

ASST. CONTROLLER OF TEXTILES
(DISTRIBUTION OFFICE)
Textile Control Dept.
18 DEC. 1946
Date, 18-12-1946
A/c. No. 691/C691.
COLOMBO.

Textile Control Department

A/c. No. 691/C691.

Date, 18-12-1946

For Credit of H. A. N. Mohamed & Co.

Paid in to Credit of H. A. N. Mohamed & Co.

Twenty two thousand only

Twenty two thousand only Coupons.

Coupons.

Particulars	
Consumer Coupons 22000	Signed Illegibly Receiving Clerk
Special ..	Signed Illegibly Shroff
Coupon Equivalent Documents	
Total 22000	Signed Illegibly Staff Assistant

Particulars	
Consumer Coupons 22000	
Special ..	
Coupon Equivalent Documents	
Total 22000	

Shroff Signed Illegibly

By Signed Illegibly

Ledger Clerk Signed Illegibly

Signed Illegibly
Staff Assistant

Folio 225

Order of the Supreme Court.

Application for a Writ of *Certiorari* on the Controller.
of Textiles (75).*Present* : HOWARD, C.J.*Counsel* : H. V. PERERA, K.C., with C. SUNTHARALINGAM, for the
Petitioner.H. W. R. WEERASOORIYA, C. C., with WALTER JAYE-
WARDENE, C. C., and DOUGLAS JANSZE, C. C., for the
Respondent.

10

Argued on : 12th September, 1947.*Delivered on* : 19th September, 1947.

HOWARD, C.J.

The petitioner who is a dealer in textiles applies for a mandate in the nature of a Writ of *Certiorari* under section 42 of the Courts Ordinance against the respondent, the Controller of Textiles, quashing an order of the respondent made under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945. This order is contained in a letter to the petitioner dated the 21st February, 1947, and revoked the petitioner's
20 licences granted under the Regulations. The facts leading up to the order quashing the licences of the petitioner are set out briefly as follows : On or about the 13th February, 1947, the officers working in the Department of Textiles made certain inquiries into an alleged shortage of textile coupons aggregating to 40,000 points in respect of the textile coupons surrendered on behalf of the petitioner to the Textile Coupon Bank on the 30th November, 1946, and the 18th December, 1946. On the 30th November, 1946, the petitioner's firm surrendered textile coupons to the Coupon Bank. According to the foil and counterfoil of the paying-in-slip 21,500 coupons were surrendered. The foil and counterfoil of this
30 paying-in slip are both initialled by the representative of the petitioner's firm, one Peter Fernando, and three departmental officers namely a Staff Assistant, the Shroff and the Ledger Clerk. On the 18th December, 1946, further coupons were surrendered by the petitioner's firm amounting according to foil and counterfoil of the paying-in slip to 22,000 coupons. On this occasion the foil and counterfoil were signed by Peter Fernando, the same Staff Assistant, the acting Shroff and a different Ledger Clerk. The procedure followed by the department after the surrender of coupons is as follows :—The Receiving Clerk counts the coupons and checks the number received with the number entered in the paying-in slip. He then
40 enters the number in a scroll book and obtains the signature of the depositor. After this he passes on paying-in slips together with coupons to the Assistant Shroff. The latter officer checks the numbers of the coupons, initials paying-in slips and passes to the Shroff without the

No. 4
Order of the
Supreme
Court
19-9-47
—continued.

coupons, which are sent elsewhere for cancellation. The Shroff enters in a register the number of points as they appear in paying-in slip, signs foil and initials counterfoil and passes them to the Chief Clerk. The Chief Clerk also goes through the formality of countersigning foil and counterfoil and enters in the Credit Control Book the number of points appearing in paying-in slip. He then detaches foil of paying-in slip which he passes to the Ledger Clerk and at the same time returns to the dealer the counterfoil. The Ledger Clerk enters in the dealer's Ledger as a credit the number of points appearing in the foil. In regard to the surrender of coupons by the petitioner's firm on the two dates in question 10 the numbers credited to the firm in the ledger account agree with the numbers purported to have been surrendered according to the foil and counterfoil. On the other hand according to the Scroll Book only 1,500 coupons were surrendered by Peter Fernando on the 30th November, 1946, and 2,000 coupons on the 18th December, 1946. Perusal of the foils and counterfoils suggested that interpolations had been made, the figures "1500" having been converted into "21500" and the figure "2000" into "22000". The Textile Controller in view of these discrepancies in the documents providing for the accounting of the coupons that had been surrendered by the petitioner's firm came to the conclusion 20 that the firm had been credited with 40,000 more coupons than had been surrendered. On discovering this irregularity he wrote a letter to the petitioner's firm dated the 18th February, 1947, (referred to as "B" in petitioner's affidavit). This letter was worded as follows :—

Control of Textiles Office,
P. O. Box No. 538, Colombo.

My No. CR. C. 691/4324 of 18th February, 1947.

MESSRS. H. A. N. MOHAMED & Co.,
209/211, Main St., Colombo.

Gentlemen,

30

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 undermentioned 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 Registers kept by the Counter Clerk, Shroff and Asst. Contr.	(3) Points credited in your Ledger Account	40
On 30-11-46	1,500	21,500	
On 18-12-46	2,000	22,000	

- (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.

No. 4
Order of the
Supreme
Court
19-9-47
—continued.

10 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.

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
20 Office Assistant.

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

The petitioner's firm on receipt of this letter consulted their legal adviser who replied to "B" by a letter dated the 20th February, 1947, (marked "C"). This letter took the form of denying the allegations made against the petitioner. The submission was made that inspection of the relevant documents indicated a colossal fraud by the officers of the
30 Textiles Department who it was also suggested had corrupted Peter Fernando, the employee who had surrendered the coupons. The letter disclaimed any awareness on the part of the petitioner of anything amiss in the work of Peter Fernando who after failing to give any explanation had disappeared and could not be traced. The petitioner also maintained that it would be unfair and unjust to revoke his licence when it was impossible to say whether the fraud was committed entirely by the officers of the department acting by themselves alone or with complicity on the part of one of the petitioner's employees. The petitioner further maintained that his books showed that all the coupons indicated by the

No. 4
Order of the
Supreme
Court
19-9-47
—continued.

paying-in slips had been surrendered. On the 21st February, 1947, the respondent cancelled the licences of the petitioner in a letter marked “ D ” which is in the following terms :—

Control of Textiles Office,
P. O. Box 538, Colombo.
My No. CR. C. 691/4324 of 21-2-47.

MESSRS. H. A. N. MOHAMED & Co.,
Colombo.

Sirs,

With reference to my letter No. CR. C. 691/C 691 of 18-2-47 and the 10 letter of 20-2-47 submitted by your lawyers, I find you a person unfit to hold a textile licence. I therefore order the revocation of all the licences held by you to deal in textiles under Reg. 62 of the Defence (Control of Textiles) Regulations, 1945, with effect from 21-2-1947, *i.e.* your licences No. 691/C. 691 and No. 696/C. 696.

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

3. You are also informed that you can keep any of your own stocks in your possession for 15 days after the date of revocation. Meanwhile, 20 if you can make suitable arrangements to deliver the goods to another dealer, on such terms as you like, I shall sanction the transfer before that date on condition that—

- (1) you surrender the remaining coupons in your hand and the coupons you obtain by the sales with my sanction ;
- (2) the transferee surrenders the coupons for the goods transferred. Possession of the goods after 15 days will be regarded as unlicensed possession and the goods will be seized and a prosecution entered.

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

Mr. H. V. Perera on behalf of the petitioner contends that Regulation 62 of the Defence (Control of Textiles) Regulations, 1945, under which the respondent acted did not entitle him to cancel the licences of the petitioner. Regulation 62 is worded as follows :—

“ 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 40 to that dealer.”

Mr. Perera has referred to paragraph (2) of “ B ” in which the respondent states : “ I have reason to believe that you got these interpolations made and contrived to obtain on the Ledger Account credit for a bigger amount

than you were entitled to on the basis of the coupons surrendered by you ”. Mr. Perera maintains that the respondent had no reasonable grounds for this allegation. Such grounds have not been disclosed by the respondent so that the petitioner might have an opportunity of meeting them. In these circumstances the allegation rests only on suspicion. Suspicion is not, to use the words of the regulation, “ a reasonable ground ” on which to base the Controller’s belief that the licensee is unfit to be allowed to continue as a dealer and hence to cancel the licence.

No. 4
Order of the
Supreme
Court
19-9-47
—continued.

Although by inference from “ B ” and “ D ” the cancellation pur-
10 ported to be made on the allegation that the petitioner contrived these
frauds, Mr. Weerasooriya, on behalf of the respondent, has contended in
this Court that the latter was justified in cancelling the licences by reason
of the fact that the petitioner employed a dishonest employee to surrender
the coupons to the Coupon Bank. In reply to this contention Mr. Perera
argues that the unwitting employment of a dishonest employee would not
be a sufficient ground under the regulation for cancelling the licences.
The words of the regulation are that the “ dealer ” and not his employee
should be deemed to be unfit to be allowed to continue as a dealer. Mr.
Perera has also pointed out that this was not the ground on which the
20 respondent purported to act and if it was, the petitioner has not been
given any opportunity of meeting this allegation. Mr. Weerasooriya has
further contended that the petitioner was given every opportunity of
showing cause against the cancellation of the licence. He maintains,
moreover, that it is not open to this Court to enquire into the materials
or sufficiency of the materials on which the respondent reached his con-
clusion. In this connection Mr. Weerasooriya has cited the case of the
King vs. Nat Bell Liquors Ltd. (1922) 2 A. C. 128, in which it was held that
a conviction by a Magistrate for non-indictable offence cannot be quashed
on *Certiorari* on the ground that the depositions show that there was no
30 evidence to support the conviction or that the Magistrate has misdirected
himself in considering the evidence. Absence of evidence does not affect
the jurisdiction of the Magistrate to hear the charge. The same principle
was laid down in *R. vs. Furnished Houses Rent Tribunal for Paddington
and St. Marylebone* (1947) 1 All England Reports 448.

In *Abdul Thassim vs. Edmund Rodrigo* (48 N. L. R. 121) it was held
by a Court constituted by five Judges of the Supreme Court that the fact
that the Controller can only act under Regulation 62 when he has “ reason-
able grounds ” indicates that he is acting judicially and not exercising
merely administrative functions. He is therefore amenable to a mandate
40 in the nature of a Writ of *Certiorari*.

In the circumstances the question I have to decide is whether the
Controller in cancelling the licences of the petitioner has acted judicially.
Mr. Weerasooriya has invited my attention to the fact that, whereas
Regulation 62 fails to provide for the observance of any procedure by
the Controller, Regulation 58 does so provide. Mr. Weerasooriya also
points out that Regulation 63 provides the Textile Controller with an
Advisory Board, but he is under no obligation to seek the advice of this

No. 4
Order of the
Supreme
Court
19-9-47
—continued.

Board when action for the cancellation of a licence is taken under Regulation 62. Mr. Weerasooriya refers to these provisions in order to show that the Legislature did not intend to fetter the discretion of the Controller when it was a question of cancellation of licences. After taking into consideration the various submissions by Mr. Weerasooriya can it be said that the Controller has acted judicially? The principles on which a tribunal not having the status of a Court of Law should act have been laid down in the judgment of Lord Haldane, L.C. in *Local Government Board vs. Arlidge* (1915) A. C. 120. This case dealt with the duties of a tribunal when the duty of deciding an appeal is imposed. At page 132-133 Lord 10 Haldane stated as follows:—

“ My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure 20 conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organisation with executive functions. In this it resembles other great departments of the State. 30 When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education vs. Rice* (1911) A. C. 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went 40 on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. If the Board failed in this duty, its order might be the subject of *Certiorari* and it must itself be the subject of *mandamus*.”

At page 134 Lord Haldane also stated :—

No. 4
Order of the
Supreme
Court
19-9-47
—continued.

“ What appears to me to have the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of Justice, instead of the other standard which was laid down for such cases in *Board of Education vs. Rice* (1911) A. C. 179. I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had. Moreover, I doubt whether it is correct to speak of the case as a *lis inter parties*.”

10 One of the principles formulated in *Local Government Board vs. Arlidge* was that the tribunal must give the parties an opportunity of stating their case or in the words of Lord Haldane “ a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view ”. This same principle was emphasised in the case of *Hopkins vs. Smethwick Local Board of Health* (24 Q. B. D. 712) in which it was held that, where a building has been erected in contravention of the bye-laws of a local board of health, the board cannot under section 158 of the Public Health Act, 1875, pull down the building without giving the owner an opportunity of showing cause why it should
20 not be pulled down. I have also been referred to the case of *A, a pleader vs. The Judges of the High Court of Madras* (1930) A. I. R. P. C. 144 in which it was held that charges of professional misconduct must be clearly proved and should not be inferred from mere ground of suspicion. Applying the principles formulated in the cases to which I have referred I am of opinion that, inasmuch as the grounds on which the respondent had come to the conclusion 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
30 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 ” the respondent has not acted judicially. On the other hand, if the respondent cancelled the licences because the petitioner employed Peter Fernando, 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. For the reasons I have given I direct that the rule nisi be made absolute and that Writ of *Certiorari*
40 issue as prayed by the petitioner in his petition dated the 25th February, 1947, together with costs.

Sgd. J. C. HOWARD,
Chief Justice,

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).

BAPU MIYA MOHAMED MIYA of No. 12, Charles Circus, 10
Alfred Place, Colpetty, 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 CONTROLLER OF TEXTILES,
Colombo.

This matter coming on for Final determination before the Honourable
Sir John Curtois Howard, Knight, K.C., Chief Justice, on the 12th
September, 1947, in the presence of Mr. H. V. Perera, K.C., Advocate, 20
with Mr. C. Suntharalingam, Advocate, for the Petitioner, and Mr.
H. W. R. Weerasooriya, Crown Counsel, with Messrs. Douglas Janszè,
and Walter Jayawardena, Crown Counsel, for the respondent.

It is ordered that the Rule of this Court dated the 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 30
Justice, at Colombo, this 19th day of September, in the year of Our Lord
One Thousand Nine hundred and Forty-seven, and of our Reign the
Eleventh.

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

No.....

Supreme Court of Ceylon
Application No. 75 of the year 1947

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

In the matter of 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, Have-
lock Road, Colombo.....*Respondent-Appellant.*

AND

BAPU MIYA MOHAMED MIYA
of No. 12, Charles Circus, Alfred
Place, Colpetty, Colombo.....*Petitioner-Respondent.*

**RECORD
OF PROCEEDINGS**
