Privy Council Appeal No. 18 *of* 1949

M. F. De S. Jayaratne - - - - - - - - *Appellant*

v.

Bapu Miya Mohamed Miya - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JUNE, 1950

Present at the Hearing:

LORD PORTER
LORD OAKSEY
LORD RADCLIFFE
SIR JOHN BEAUMONT
SIR LIONEL LEACH

[*Delivered by* LORD RADCLIFFE]

This appeal from a Decree of the Supreme Court of Ceylon dated the 19th September, 1947, raises what are in effect the same questions as those which have been dealt with by their Lordships in the appeal No. 17 of 1949, *Nakkuda Ali* v. *M. F. De S. Jayaratne*.

The appellant is the Controller of Textiles for Ceylon and is charged with the administration of the textile control scheme under the Defence (Control of Textiles) Regulations, 1945. The respondent carries on business under the name of H. A. N. Mohamed & Co. at two addresses in Colombo and was the holder of licences issued pursuant to those Regulations, which authorised him to deal in textiles at those addresses. By a letter dated the 21st February, 1947, the appellant notified the respondent that he found him to be a person unfit to hold a textile licence and that he ordered the revocation of all the textile licences held by him as from the same date. The revocation was made under the powers given to the Controller of Textiles by Regulation 62, which states that he may cancel a textile licence where he has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer.

On the 26th February, 1947, the respondent obtained from the Supreme Court an order directing the appellant to show cause why a mandate in the nature of a writ of certiorari should not be issued to him quashing the cancellation order contained in his letter of the 21st February. The appellant duly appeared to show cause before the learned Chief Justice of Ceylon, Sir John Curtois Howard, and on the 19th September, 1947, the Chief Justice delivered judgment holding that the rule nisi ought to be made absolute and the writ of certiorari issued accordingly. A decree of the same date was drawn up to this effect, quashing the appellant's order of the 21st February and directing him to pay the respondent's costs. The appellant asks that that decree should be reversed.

The appellant's argument raised the same objections to the jurisdiction of the Supreme Court as their Lordships have dealt with in the previous appeal, No. 17 of 1949. Having regard to the decision of the Full Bench in the case of *Abdul Thassim* v. *Edmund Rodrigo*, 48 N.L.R. 121,

these objections were not open to the consideration of the Chief Justice in the Supreme Court. Their Lordships will not repeat what they have said in their Judgment in the other appeal, but the views that they have expressed in that case conclude the subject of this appeal. While they hold that the appellant is a "person" within the meaning of s. 42 of the Court's Ordinance and while they construe Regulation 62 as importing what is called an objective test, namely that there must exist in fact reasonable grounds of belief, known to the Controller, before he can validly exercise the power of revocation, they do not think that the appellant's decision to revoke a licence under that Regulation is a judicial or quasi-judicial act to which the remedy of certiorari can be applied by the Court.

The appellant is therefore entitled to have the Decree of the Supreme Court set aside on the ground that a mandate in the nature of a writ of certiorari does not lie in this case. But it is desirable that their Lordships should indicate very briefly what view they have formed on the merits of the respondent's application, if only because a question of the costs of the Supreme Court hearing is involved.

The system governing the surrender of coupons by a dealer to the appellant's Textile Coupon Bank is fully set out in the Judgment of the Chief Justice. It is also set out in their Lordships' Judgment in the previous appeal. It is not necessary to recite it again. It is sufficient to say that in this case the two material dates are the 30th November and the 18th December, 1946. In respect of the earlier date the respondent's ledger account at the Bank showed a credit of 21,500 points: the foil and counterfoil of the paying-in slips showed a corresponding number of coupons surrendered. In respect of the later date, the respondent's ledger account showed a credit of 22,000 points: the foil and counterfoil of the paying-in slips showed a corresponding number of coupons surrendered. On the other hand, the registers kept by the receiving clerk, Shroff and chief clerk showed 1,500 and 2,000 points only as surrendered by the respondent on those respective days. Moreover, the foils and counterfoils (of which the counterfoils had been obtained by an inspector from the respondent's possession) showed obvious signs of interpolation in respect of the word "Twenty" on each of the two occasions and the appellant in fact obtained a report from the Government Examiner of Questioned Documents which made it at any rate very probable that a subsequent interpolation in each case had been responsible for adding twenty thousand to the number of coupons covered by the paying-in slips.

These facts the appellant brought to the respondent's attention by letter dated the 18th February, 1947, and after stating them he added:— "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." It is plain from what followed in the letter that the respondent had already by that date made some statement to the Assistant Controller who had been deputed by the Controller to hold an enquiry into these matters; but the respondent did not inform the Court what he had said or what had been said to him on that occasion. The letter concluded by suggesting that if he had any explanation to offer beyond what he had already said to the Assistant Controller he should submit it in writing at once, and inspection of documents was invited.

The respondent sent a reply through his proctor on 20th February. Certainly the letter opened with a formal denial of "all and singular the allegations made against him". But it is not easy to extract from the rest of the letter what was the attitude of the respondent to matters which, after all, came very close to him personally. His main theme was that there must have been a "colossal fraud" in the appellant's Department, made possible by the faulty system operated there, and that

the right thing to do was to have an investigation of the alleged forgeries of the paying-in slips before any question of cancelling his licence arose. He declined to admit that there were any interpolations in the foils or counterfoils or that additions had been made to them after they had been signed or initialled in the Department. In view of the extremely suspicious appearance of those documents it would have been more helpful towards an explanation if the respondent had made some statement as to one thing that must have been within his own knowledge: Were the foils and counterfoils wholly or in part in the handwriting of himself or one of his employees? The letter finally contained statements that an employee of the respondent, Peter Fernando, who had apparently been responsible for the work of surrendering the firm's coupons to the Bank, had disappeared after questioning: and that the firm's books were in order and showed that the full amount of coupons, as recorded in the ledger account, had in fact been surrendered on the two impugned occasions. This was supported, it was said, by the signatures and initials of the appellant's officers on the counterfoils of the paying-in slips which had been returned to the respondent from the Bank. Thus, in the end, the respondent appeared to be relying on the correctness of the paying-in slips despite their suspicious appearance.

If the appellant did not regard this letter as discharging the respondent from the suspicion which inevitably attached to him in view of the discrepancies in the books and the appearance of the paying-in slips, it cannot be said that he came to any unreasonable conclusion. He may have been right or wrong. The respondent may have been the innocent employer of a corrupt servant. But that is not a question that would arise in these proceedings, even supposing that the appellant were to be treated as under a duty to act judicially in arriving at his decision. On no view could he be required by that duty to treat the respondent's case as if he were conducting a criminal trial with the prosecution put to strict proof of what was charged. The passage from Lord Haldane's speech in *Local Government Board* v. *Arlidge,* 1915 A.C. 120, which is quoted in the Chief Justice's judgment in the Supreme Court makes that plain. Nor is it perhaps out of place to recall that that passage, classic as it is in its appropriate field, relates to the duty of those upon whom "the duty of deciding an appeal is imposed". It only leads to confusion to seek to apply it literally to a case such as the present in which nothing that fairly resembles an appeal or a *lis inter partes* is taking place: in which, on the contrary, the foundation of the Controller's jurisdiction to exercise his power is only that he should have reasonable grounds of belief.

These, as their Lordships see it, the appellant did indeed possess. Putting aside what may have been contained in the statements of the respondent and Peter Fernando that were made to the Assistant Controller who held the enquiry, there were the foils and counterfoils, the evidence of the Department's own books, and the information of the receiving clerks, assistant Shroff and Shroff of the Coupon Bank itself. This information, presented in the form of affidavits at the hearing before the Chief Justice, was all to the effect that at the time when the respondent's coupons had been surrendered on the two relevant occasions only the smaller number had been brought in and surrendered and that the paying-in slips to which they had respectively put their signatures and initials had been altered subsequently to cover 21,500 and 22,000 points. This was directly in contradiction with the respondent's story, and there was no reason why, of the two accounts of what had taken place, the appellant should not decide to accept that of his own officials. There would be nothing to violate natural justice in doing so. He had taken care to let the respondent know with precision what were the discrepancies in the Department's books that related to his account; he had told him that he regarded the paying-in slips as having been tampered with, and that he considered himself to have reason to believe that the respondent had got the interpolations made so as to procure for himself a false ledger credit; and he had invited an explanation.

The respondent had given as much explanation as he would or could, apart from what he had already stated at the Assistant Controller's enquiry. The learned Chief Justice, in his full and careful judgment, decided against the appellant on the ground that he "condemned the petitioner merely on suspicion". That was the basis of his view that the appellant had not acted judicially. It is here that their Lordships feel compelled to differ from the Chief Justice in his appreciation of the merits of the case. In a sense it is indeed true that the appellant condemned the respondent on suspicion. But it does not adequately appreciate the situation to describe the respondent as acting merely on suspicion. The suspicion which he entertained arose reasonably out of the facts that were before him, and nothing appears in the explanation which the respondent added to those facts that made it unreasonable for the appellant to decide that his suspicion had not been removed and that he was justified in regarding the respondent as unfit to retain a dealer's licence.

The respondent did not appear on the argument before the Board. For the reasons which have been given their Lordships will humbly advise His Majesty that the Decree of the Supreme Court dated the 19th September, 1947, should be set aside and that in place thereof an Order should be made that the rule nisi obtained by the respondent be discharged with costs. The respondent must pay the appellant's costs of the appeal to the Board.

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In the Privy Council

M. F. De S. JAYARATNE

v.

BAPU MIYA MOHAMED MIYA

DELIVERED BY LORD RADCLIFFE

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