

1963 Present : Basnayake, C.J., Abeyesundere, J., and G. P. A. Silva, J.

M. A. A. HUSSAIN, Appellant, and THE TRIBUNAL OF APPEAL
UNDER LICENSING OF TRADERS ACT

S. C. 1 of 1962—Tribunal of Appeal C. 4/Licensing of Traders Act

Licensing of Traders Act, No. 62 of 1961—Sections 2, 3, 4, 6, 7 (1)—Licensing Authority appointed by Minister—His incapacity to appoint other licensing authorities—Licensing of Traders (No. 1) Regulations, 1961—Validity of Regulations 2 and 12.

Section 3 (b), read with section 4, of the Licensing of Traders Act empowers the Minister to declare by regulation the authority or authorities by whom licences may be granted, but it does not empower him to make a regulation authorising a licensing authority to appoint others to exercise any of the powers of a licensing authority.

Accordingly, Regulation 12 of the Licensing of Traders (No. 1) Regulations, 1961, being *ultra vires*, the Director of Commerce, who is declared by Regulation 2 to be the Licensing Authority, cannot avail himself of the provisions of Regulation 12 to appoint Government Agents to exercise the powers of a licensing authority.

APPPEAL from a decision of the Tribunal of Appeal constituted under section 6 of the Licensing of Traders Act, No. 62 of 1961. This appeal was referred to a Bench of three Judges by an order made under section 48 A of the Courts Ordinance.

H. Rodrigo, with *D. A. E. Thevarapperuma* and *M. D. K. Kulatunga*, for the Appellant.

V. C. Gunatilake, Crown Counsel (on 1.2.63), and *R. S. Wanasundere*, Crown Counsel (on 14.2.63), as *amicus curiae*.

February 14, 1963. BASNAYAKE, C.J.—

This is an appeal from a decision of the Tribunal of Appeal under section 6 of the Licensing of Traders Act, No. 62 of 1961.

Section 7 (1) of that Act provides that an appeal shall lie on any question of law against an order of a Tribunal to the Supreme Court and shall be preferred before the expiry of a period of one month next succeeding the date of the order of the Tribunal.

This appeal came up for hearing before my brother Tambiah in the first instance who, under section 48 of the Courts Ordinance, reserved the question of law arising thereon for the decision of more than one Judge of this Court. An order under section 48A of that Ordinance was made by me and the appeal comes up for hearing before us in pursuance of that order.

The following grounds are urged in the petition of appeal :—

I. The said order is contrary to the weight of evidence.

II. Charge I does not disclose the contravention of any regulation.

III. It is incompetent and illegal for the Licensing Authority in terms of section 5 (1) (d) of the Act to impose a penalty in the nature of a fine without at the same time suspending or cancelling the licence given to a trader.

IV. It is unconstitutional for the Licensing Authority not being a judicial officer appointed by the Judicial Service Commission to have punished the Appellant by punitive orders.

V. The Appellant had not been asked to show cause in terms of section 5 (2) of the Act, the Notice that was served on him not being a notice meeting the requirements of the section."

Briefly, the relevant facts are as follows :—The appellant is the proprietor of the stores known as Pathuma Stores in Wellawaya. On 6th September 1961 the Divisional Revenue Officer, Wellawaya, inspected his shop and made the following report :—

" (1) He does not possess a dealer's licence. I was told that he has applied for a licence and that he has not received it so far from the Kaohoheri.

- (2) A notice board showing the price list was not available. Instead there was a list on a paper written in pencil. This was not displayed conspicuously. This is against Regulation No. 8.
- (3) It was mentioned on this list that gram and dhal were available for sale. But when questioned as to where these items were I was told that they were sold out. This is a contravention of Regulation No. 8 (3).
- (4) It was stated on this notice board that onions (B. onions) were available for sale. But in fact they were not available for sale. The dealer told me that this item was sold off. This is a contravention of Regulation No. 8 (3).
- (5) Biscuits were available for sale, but their availability or their prices were not indicated on the notice board. This is a contravention of Regulation No. 8.
- (6) There were two varieties of chillies for sale. The dealer stated that the price of one variety was Rs. 1.15 per lb. and the other Rs. 1.00 per lb. But only the variety sold at Rs. 1.15 per lb. was indicated on the notice board. This is a contravention of Regulation No. 8."

Thereupon the Government Agent of Moneragala on the 8th September 1961 addressed the following communication to Pathuma Stores, Wellawaya :—

" The D.R.O., Wellawaya has reported that he inspected your shop on 6th September 1961 and that you have resorted to the following malpractices :—

- (i) A proper notice board showing the prices of goods was not displayed conspicuously. Instead you produced a list of goods on a paper written in pencil.
- (ii) It was indicated on the list of goods that gram, dhal and onion (B. onions) were available for sale. But these items were not in fact available for sale.
- (iii) Biscuits were available for sale. But it was not stated in the list of goods that they were available for sale nor were the prices of these items given in the list.
- (iv) There were two varieties of chillies for sale. The price of one variety only was given in the list of goods. The price of the other variety did not appear at all.

2. You have thereby contravened Regulations No. 7, 8 (3) and 8 (4) of Regulations under the Licensing of Traders Act, No. 62 of '61 published in the *Ceylon Government Gazette* No. 12,575A dated 10.8.1961 as amended in the *Ceylon Government Gazette* No. 12,610 dated 18.8.1961.

3. As such, you are hereby requested to make a submission, if any, within 3 days of the receipt of this letter, explaining as to why a punitive order should not be imposed on you by me by virtue of the powers vested in me under the Licensing of Traders Act, No. 62 of 1961."

The appellant made his submission as required by the Government Agent by his letter dated 9th September 1961 which reads—

"Reference to your order No. FC/195 dated 8.9.61, I had prepared a Board but the paint of this had not dried. I had therefore prepared a cardboard notice which had also got washed away for rain on 5.9.61, therefore, had to write it in pencil to make it easily readable. Now the proper notice board showing the list of goods has been prepared.

2. It is true that I had marked the prices of gram, dhal and Bombay onions on the notice board. But these items were not available at that moment for sale. I instructed my assistant to remove from the Notice Board any article which was not available for sale. But it is true that at the time of inspection the names of these items were on the Board. This was due to an oversight. I wish to inform you humbly that this was not an act of disobedience.

3. It is true that biscuits were available for sale. I did not mention it on the Notice Board as I was not aware of the controlled price. At present the prices of this item are also marked on the Notice Board.

4. There were two varieties of chillies for sale. Their price lists were also available. But the label on which the price of one variety was marked had been blown out by the wind and dropped by the side of the trough in which chillies was packed. I pointed this out to the D.R.O. at the time of inspection. Here too, I have the honour to inform you that it was not due to my negligence. Furthermore I have the honour to inform you that in future I will not act carelessly and to request you most humbly to pardon me for these offences."

Thereafter, on 15th September 1961 the Government Agent, Moneragala, sent the following communication to the appellant :—

"With reference to you letter dated 9.9.61.

2. Your explanations given to the charges in my letter No. FC/195 dated 8.9.61 are unsatisfactory. You are therefore found guilty of all these four charges. As such, by virtue of the powers vested in me under the Licensing of Traders' Act No. 62 of 1961 and the Regulations made thereunder, I impose on you the following fines for each charge and order you to credit a sum of Rs. 900/- to the general revenue. You shall pay the money on or before 30.9.61.

<i>Charge No.</i>	<i>Fines</i>
(1)	Rs. 200/-
(2)	Rs. 200/-
(3)	Rs. 200/-
(4)	Rs. 300/-."

The appellant appealed against that order to the Tribunal of Appeal constituted under section 6 of the Licensing of Traders Act, No 62 of 1961. The Tribunal of Appeal heard his appeal and made order to the effect that it saw no reason to interfere with the findings of the Licensing Authority and confirmed its order and dismissed the appeal.

It is sufficient for the purpose of this appeal for us to confine ourselves to the ground of appeal that the authority that purported to impose the penalty on the appellant was not competent and that its findings are therefore illegal.

Under section 3 of the Licensing of Traders Act, No. 62 of 1961, regulations may be made under that Act for or in respect of all or any of the matters specified therein relating to any area to which or class of traders to whom, an order under section 2 is applicable. An order under section 2 had been made and published in Gazette No. 12,575A of 10th August 1961. That order reads—

“ By virtue of the powers vested in me by section 2 of the Licensing of Traders Act, No. 62 of 1961, I, Tikiri Bandara Hanganaratne, Minister of Commerce, Trade, Food and Shipping, do by this Order declare that—

(1) with effect from eleventh day of August, 1961, no person other than a person exempted from the application of the aforesaid section by regulation made under the Act, shall carry on business as a trader in any class of any article unless he is the holder of a licence authorising him to carry on such business or otherwise than in accordance with the terms and conditions of such licence ; and

(2) paragraph (1) of this Order shall be applicable—

(a) to the whole of Ceylon ; and

(b) to all classes of traders other than itinerant vendors who do not have a fixed place of business. ”

The Minister of Commerce, Trade, Food and Shipping has also made regulations under sections 3 and 4 of the Licensing of Traders Act, No. 62 of 1961, entitled the Licensing of Traders (No. 1) Regulations, 1961. Regulation 2 of those regulations reads—

“ The Director of Commerce shall be the Licensing Authority for the purpose of these regulations. ”

Regulation 12 provides—

“The Director of Commerce may by notification published in the *Gazette* appoint the Government Agent of any Administrative District to exercise the powers of the Director of Commerce as a Licensing authority under these regulations within the Administrative District of such Government Agent.”

Acting under the above regulation the Director of Commerce published the following notification in the *Gazette* No. 13,292 of 5th September 1962 :—

“By virtue of the powers vested in me by regulation 12 of the Licensing of Traders (No. 1) Regulations, 1961, published in *Gazette Extraordinary* No. 12,575A of August 10, 1961, I, Ginige Richard Walter de Silva, Director of Commerce, do by this notification—

- (1) appoint the Government Agent, the Additional Government Agent and the Assistant Government Agents of each Administrative District specified in the Schedule hereto, to exercise within their respective Administrative Districts the powers vested in me as a licensing authority under the Licensing of Traders (No. 1) Regulations, 1961 ; and
- (2) cancel the notification under regulation 12 of the Licensing of Traders (No.1) Regulations, 1961, published in *Gazette* No. 12,577 of August 11, 1961.”

Regulation 2 which declares that the Director of Commerce shall be the licensing authority is not questioned by the appellant, but regulation 12 is. He submits that section 3 (b) empowers the regulation making functionary to declare by regulation the authority or authorities by whom licences may be granted, but that it does not empower him to make a regulation authorising the Director of Commerce or any other authority to appoint others who may grant licences. The submission of the appellant is sound and is entitled to succeed.

Regulation 12 being *ultra vires* the Government Agent of Moneragala had no authority in law to punish the appellant or exercise any of the powers of a licensing authority. The proceedings taken by him are illegal.

We accordingly reverse the order of the Tribunal and quash the order of the Government Agent of Moneragala.

ABEYESUNDEBE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Appeal allowed.