

1966 Present: H. N. G. Fernando, S.P.J., Sri Skanda Rajah, J., and
G. P. A. Silva, J.

D. M. IBRAHIM and another, Petitioners, and THE GOVERN-
MENT AGENT, VAVUNIYA (Licensing Authority appointed
under the Licensing of Traders Act), Respondent

S.C. 77/64—*In the matter of an Application for a Writ of Certiorari
and/or a Writ of Prohibition*

*Licensing of Traders Act, No. 62 of 1961—Section 5 (1) (a) (d)—Conferment of judicial
power on licensing authority—Invalidity—Control of Prices Act, No. 29 of 1950
—Contravention of Price Control Regulation—Effect of a “punitive order”—
Licensing of Traders Regulations of 1961, Regulation 8 (6)—Constitutional law
—Certiorari.*

The provisions of the Licensing of Traders Act No. 62 of 1961 are *ultra vires*
in so far as they empower a licensing authority to determine whether a trader
has contravened the Control of Prices Act, No. 29 of 1950, or any Licensing
Regulation prohibiting contraventions of the Control of Prices Act.

Where a licensing authority, purporting to act under the provisions of section
5 of the Licensing of Traders Act, made a “punitive order” requiring a firm of
traders to pay to the Consolidated Fund a sum of Rs. 5,000 for selling a pound
of Bombay onions at a price in excess of the maximum price prescribed under
the Control of Prices Act—

Held, that the punitive order was made in respect of an offence which, being
a contravention of the Control of Prices Act, was triable and punishable in the
ordinary course by a Magistrate even prior to the date when the Ceylon (Con-
stitution) Order in Council came into operation. In authorising the licensing
authority to order the payment of money to the Consolidated Fund in the
circumstances of the present case, Parliament conferred judicial power on the
licensing authority. The conferment of such power on an authority other than
a Court was in conflict with the provisions of the Constitution in so far as it
constituted an usurpation and infringement of the separate power of the
Judicature.

APPPLICATION for a writ of *certiorari*.

S. Nadesan, Q.C. with A. C. Nadarajah and M. D. Jesuratnam, for the
Petitioners.

H. L. de Silva, Crown Counsel, for the Respondent.

Cur. adv. vult.

July 22, 1966. H. N. G. FERNANDO, S.P.J.—

This application is for a Writ of Certiorari quashing an order made
against the Petitioners in terms of section 5 of the Licensing of Traders
Act, No. 62 of 1961.

The Act, according to the long title thereof, was enacted to make provision for the licensing of traders, by ensuring the maintenance of business standards and morality, for enabling the maintenance of fair and stable prices in essential consumer commodities, and for connected matters. The Act first provides for the introduction of a licensing system for such class or classes of traders as may be specified by the Minister. Power is then taken to make regulations as to the grant of licences and furnishing of stock returns and other statements and declarations by licensed traders.

Section 5 of the Act enables a licensing authority to make what is termed a “punitive order” suspending or cancelling the licence issued to a trader, and requiring the trader to pay to the general revenue, a sum not exceeding Rs. 5,000. For present purposes, it suffices to refer to two of the four grounds upon which such an order may be made :—

“(a) If the authority by whom a licence has been issued to any trader in any article is satisfied that such trader has contravened any of the provisions of this Act or of any regulations made thereunder, or

(d) if such authority is satisfied on information supplied by any member of the public that such trader has acted or is acting in contravention of any provision of this Act, the Control of Prices Act, No. 29 of 1950, or the Food Control Act, No. 25 of 1950”

Certain regulations referred to as the Licensing of Traders (1) Regulations were published in a Gazette of 10th August, 1961. Regulation 8 (6) provides that a licensed trader shall not sell articles specified in the Schedule of the Regulations at a price higher than the maximum price fixed by Order under the Control of Prices Act, 1950.

The Petitioners are a firm of traders licensed under the Act by the Government Agent, Vavuniya. On 24th January, 1964 the Petitioners were informed by the Government Agent that they had sold a pound of Bombay onions at 60 cts. a pound, when the controlled price was 35 cts., and have committed an offence in breach of Regulation 8 (b? 6) of the Regulations, and that this offence had been reported to the Licensing Authority by a Food and Price Control Inspector. The Petitioners were requested to show cause why they should not be punished under the Regulations.

The Petitioners thereupon wrote to the licensing authority offering their explanation, but this was apparently not accepted. On 19th February, 1964 the Petitioners were informed that they must pay a fine of Rs. 5,000 to the Consolidated Fund.

The ground upon which we are invited to quash this Order is that in authorising the licensing authority to order the payment of money to the Consolidated Fund in the circumstances of this case, Parliament has conferred judicial power on the licensing authority, and that the exercise of

such power conflicts with the provisions of the Constitution. The principle relied on is that declared in the case of *Liyanage and others*¹, to the effect that “there exists a separate power in the judicature which, under the Constitution as it stands, cannot be usurped or infringed by the executive or the Legislature”, which principle is based on the consideration (among others) that “the Constitution’s silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the judicature”.

It will be seen that the act of the Petitioners which provoked the making against them of this punitive order is that they sold an article at a price in excess of the maximum price prescribed under the Control of Prices Act, or in other words, that they committed an offence under that Act which is triable and punishable in the ordinary course by a magistrate. Indeed, paragraph (d) of section 5 of the Act which I have reproduced above specifically refers to a contravention of that Act. Even Regulation 8 (6) of the Licensing of Traders Regulations is an otiose provision merely reminding traders of their obligation to comply with Price Control Orders. Price Control is not a new invention of Parliament. Statutory control of prices and statutory provision for the trial and punishment by the judicature of contraventions of Price Control Orders, existed well before the Constitution came into operation. Moreover, the trial and punishment of offences of the nature of such contraventions has always, under our law, been committed to the judicature. In purporting to empower some authority other than a court, to punish such contraventions by the infliction of a penalty which is nothing more nor less than a fine, the Licensing of Traders Act constitutes in the language of the Privy Council, an usurpation and infringement of the separate power of the judicature.

Paragraph (a) of section 5 (1) of the Act empowers the licensing authority to make a punitive Order for a contravention of Regulations made under the Act. The Order actually made in this case purports to have been in pursuance of such Regulations. But as I have already stated the alleged contravention in this case was in fact a contravention of a Price Control Order, and it constituted also a contravention of the Regulations only for that reason. If it is not lawful for a licensing authority to try and determine and punish a contravention of a Price Control Order, the method of authorising that authority to inflict the punishment on the ground that the Licensing Regulation mentioned the same contravention, is the method of doing indirectly that which you cannot do directly.

In the judgment which is being concurrently delivered in the case of *Xavier v. S. N. B. Wijekoon and others* (application No. 263/65)², reference is made to the imposition of penalties under Revenue Statutes and similar cases, where the penalties have (in the language of the American judgments), the remedial character of sanctions. In some American decisions stress is laid on the fact that the object of the penalty is to

¹(1965) 68 N. L. R. 265.

²(1966) 69 N. L. R. 197.

reimburse the revenue for extra administrative expenditure incurred by the State on account of false tax returns, false import declarations, etc. But the penalty which has been imposed in the present case is not of such a character. Having regard to the objects of the Licensing of Traders Act as stated in its long title, the imposition of this penalty cannot be regarded as part of a composite legislative scheme to further those objects. This penalty has the same effect, whether as punitive or deterrent, as would a fine inflicted by a court for an offence under the Control of Prices Act.

For these reasons I hold that the provisions of the Licensing of Traders Act are *ultra vires* in so far as they empower a licensing authority to determine whether a trader has contravened the Control of Prices Act, or any Licensing Regulation prohibiting contraventions of the Control of Prices Act.

The Order of the licensing authority is quashed. It is unnecessary to order the further relief prayed for by the Petitioners, but they will be entitled to costs fixed at Rs. 500.

SRI SKANDA RAJAH, J.—I agree.

G. P. A. SILVA, J.—I agree.

Application allowed.
