

1947

*Present : Dias J.*

BUHARI *et al*, Petitioners, and JAYARATNE (Controller of Textiles), Respondent.

Applications Nos. 58 and 59 for Writs of Certiorari.

*Regulation 62 of Defence (Control of Textiles) Regulations, 1945—Cancellation of Textile dealer's licence—Controller cannot order such cancellation without grounds—Effect of words "has reasonable grounds to believe"—Writ of certiorari.*

By Regulation 62 of the Defence (Control of Textiles) Regulations, 1945, "Where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer, the Controller may cancel the textile licence or textile licences issued to that dealer".

*Held*, that the Controller is not entitled to cancel the licence of a dealer without any grounds for his finding that the dealer is unfit to hold a textile licence.

*Per DIAS J.*—"The word 'believe' is much stronger than 'suspect' and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind of the fact in which he 'believed'. It is not sufficient that a person has reason to suspect. Unless there is evidence neither a person nor a court can 'have reason to believe' that a fact exists."

**A** PPLICATIONS for writs of *certiorari* against the Controiler of Textiles.

*E. F. N. Gratiaen, K.C.* (with him *D. W. Fernando*), for both petitioners.

*M. F. S. Pulle, Acting Solicitor-General* (with him *H. Deheragoda, C.C.*), for the respondent.

*Cur. adv. vult.*

May 30, 1947. DIAS J.—

The two petitioners are brothers. They are both licensed dealers in textiles. By consent of parties the argument and decision of both applications were consolidated because the facts are precisely the same.

Each of the petitioners is moving for a *writ of certiorari* or a *writ of mandamus* against the respondent, who, at the material date, was the Controller of Textiles. It was conceded at the argument that the question of the issue of a *writ of mandamus* does not arise in these proceedings.

Each of the petitioners has filed an affidavit. No counter-affidavit has been filed by the respondent.

The petitioners' story is that licensed dealers in textiles are issued coupons to purchase textiles which they sell by retail for which they obtain coupons from the buyers. It is customary for dealers to accumulate such coupons by means of which they obtain fresh stocks for sale.

It is alleged that on December 13, 1946, the petitioner in application No. 58 came in his car from Matugama to Colombo bringing with him in a suit case 10,000 coupons belonging to him and another 10,000 belonging to his brother, the petitioner in application No. 59, for the purpose of purchasing textiles at Colombo. *En route* his car developed a defect and while the petitioner in application No. 58 was changing his tyre, his suit case containing the coupons was stolen by one of the crowd of idlers who had been attracted to the spot. A prompt complaint was made to the Police and on the following day the loss of the coupons was reported to the Textile Controller by telegram and letter—see exhibit A.

Without holding any inquiry into the matter, the respondent by his letter, marked B, dated January 17, 1947, wrote to the petitioners as follows:

“With reference to the alleged loss of your coupons on December 13, 1946, I find that you are a person unfit to hold a textile licence, hence I revoke your licence under Regulation 62 with effect from January 30, 1947.”

The Regulation under which the respondent purported to act is 62 in the *Defence (Control of Textiles) Regulations, 1945*<sup>1</sup>. That regulation reads as follows:—“Where the Controller has reasonable grounds to

<sup>1</sup> See *Defence Regulations in force on October 1, 1946, p. 108.*

believe that any dealer is unfit to be allowed to continue as a dealer, the Controller may cancel the textile licence or textile licences issued to that dealer."

Admittedly the Controller held no kind of investigation into the truth or otherwise of the allegation that these textile coupons were stolen. The Controller did not refer the matter to the Police. The petitioners were not called upon for any inquiry, nor has any charge been framed against them, departmentally or otherwise, for making a false allegation or giving false information.

The petitioners' affidavits stand uncontradicted. I am, therefore, entitled to presume that the Controller acted without any grounds for his finding that these petitioners were unfit to hold a textile licence.

The words "has reasonable grounds to believe" have been judicially interpreted in *Rex v. Banks*<sup>1</sup> and *Rex v. Harrison and others*<sup>2</sup>. The word "believe" is much stronger than "suspect" and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind of the fact in which he "believe". It is not sufficient that a person has reason to suspect *Karthigesu v. Alwis*<sup>3</sup>. Unless there is evidence, neither a person nor a Court can "have reason to believe" that a fact exists—*Litten v. Perera*<sup>4</sup>.

Furthermore it has been decided in the case of *Abdul Thassim v. Edmund Rodrigo*<sup>5</sup> that when the Controller exercises functions under Regulation 62, he is a "person or tribunal" within the meaning of section 42 of the Courts Ordinance, and the fact that he can only act under Regulation 62 when he has "reasonable grounds" indicates that he is acting judicially and not exercising merely administrative functions. A writ of certiorari will therefore lie against the Controller if he acts without jurisdiction under Regulation 62.

It is also a cardinal rule of justice that officers exercising judicial or semi-judicial functions must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who has to decide anything—per Lord Loreburn L.C. in *The Board of Education v. Rice*<sup>6</sup>. See also our local cases.—*Dharmarama v. Wimalaratne*<sup>7</sup>, *Atadasi Unnanse v. Rewata Unnanse*<sup>8</sup>, *Nuku Lebbe v. Thamby*<sup>9</sup>.

The learned Acting Solicitor-General has quite rightly not attempted to justify the irregular proceedings.

The order nisi is therefore made absolute with costs in regard to each petition.

*Order made absolute.*

<sup>1</sup> (1916) 2 K. B. at p. 622.

<sup>2</sup> (1938) 159 Law Times Rep. 95.

<sup>3</sup> (1929) 30 N. L. R. at p. 508.

<sup>4</sup> (1908) 11 N. L. R. at p. 94.

<sup>5</sup> (1947) 48 N. L. R. 121.

<sup>6</sup> (1911) App. Cases at p. 182.

<sup>7</sup> (1913) 5 B. N. C. 57.

<sup>8</sup> (1928) 29 N. L. R. at p. 364.

<sup>9</sup> (1913) 16 N. L. R. 94.