

1945

Present: Keuneman J.

CHANDRASOMA, Appellant, and SIRIWARDENE,  
Respondent.

374—M. C. Gampaha, 25,319.

*Defence (Miscellaneous) Regulations, Regulations 37 and 52—Order for requisition of paddy—Competent authority—Appointment in writing—Gazette notification.*

By virtue of a notification in the *Gazette*, the Court can take judicial notice of the fact that the Assistant Government Agent (Emergency) for an area in question is the competent authority for the purpose of the Defence (Miscellaneous) Regulations. The production of the *Gazette* is sufficient proof that the appointment in question has been made in writing.

**A** PPEAL from a conviction by the Magistrate of Gampaha.

C. Nagalingam, Acting Attorney-General (with him J. A. P. Cherubim C.C.) for complainant, appellant.

S. N. Rajaratnam (with him S. P. M. Rajendram) for accused, respondent.

*Cur. adv. vult.*

June 18, 1945. KEUNEMAN J.—

The accused-appellant was charged with having failed to deliver 98 bushels and 4 measures of paddy to the Food Production Officer in respect of an order for requisition duly made under Regulation 37 of the Defence (Miscellaneous) Regulations by the complainant who was the competent authority to make the order of requisition, and with having thereby committed an offence under Regulation 52 of the said Regulations.

The accused was acquitted, and this appeal is taken with the sanction of the Attorney-General.

It is not in dispute that the complainant is the Assistant Government Agent (Emergency), Alut Kuru korale, Gampaha, *i.e.*, for the area in question. The *Government Gazette* Notification P5 dated January 15, 1943, was produced in the case, whereby His Excellency the Governor purported to appoint the several officers specified in Column 1 for the respective areas in Column 2, for the purpose of requisitioning under Regulation 37 the articles specified in Column 3. The relevant appointments were as follows:—Government Agents, Assistant Government Agents, Assistant Government Agents (Emergency) (in Column 1) for their respective Provinces, Districts or Areas (in Column 2) in respect of any article of food or drink (in Column 3). The appointments purport to be made and signed by the Governor.

The complainant, however, stated that he did not hold a letter of appointment from the Governor appointing him a competent authority. The Magistrate held that Regulation 3 contemplated appointment by a

letter of appointment, and that in the absence of such a letter the complainant could not be regarded as the "competent authority" for the area. The accused was accordingly acquitted.

Regulation 3 (1) runs as follows:—

"The competent authority, for the purposes of any Defence Regulation shall be the person appointed by the Governor in writing to be the competent authority for the purpose of the Regulation."

Regulation 3 (2) provides that the appointment as competent authority may be made generally for the whole of the Island, or for any area or place specified in the writing, and may be limited to such of those purposes as may be specified in the writing. Regulation 3 (3) clearly contemplates that "the holder of a designated office" may be appointed as a competent authority, and provides that in that case the appointment shall be deemed to extend to the person for the time being performing the duties of the office designated, unless express provision is made to the contrary.

Regulation 3 (1) certainly requires that the Governor should make the appointment of the competent authority *in writing*. The Magistrate thought that the words "in writing" meant by means of a letter of appointment. I do not agree that the words can bear that meaning. All that is required is that the Governor's appointment must be in writing, and once the writing is proved the manner in which the appointment is communicated to the appointee has no significance. In fact, where the holder of a designated office is appointed every successor to that office is at once clothed with authority, and in fact the person for the time being performing the duties of the office has also authority extended to him. I do not see that it is necessary for the Governor to communicate that fact to the successor in office or the person performing the duties of the office.

The Magistrate has drawn attention to Regulation 4, which deals with the appointment of the "authorised officer". Under Regulation 4 (1) a senior officer of police is the authorized officer, and for certain regulations a commissioned officer in His Majesty's Forces, and for others an officer of Customs, is the authorised officer. Regulation 4 (2) adds that the Governor may by notification in the *Gazette* appoint any person by name or by office to be an authorised officer in addition to or in lieu of the persons who are authorised officers under Regulation 4 (1).

It is true that in the appointment of "an authorised officer" under Regulation 4 (2) notification in the *Gazette* is imperative. Notification in the *Gazette* is not necessary in respect of the appointment of the "competent authority" under Regulation 3, and the appointment depends upon the fact that it is made in writing by the Governor. But notification in the *Gazette* has this important consequence, that under section 57 (7) of the Evidence Ordinance (Cap. 11) the court shall take judicial notice of "the accession to office, names, titles, functions and signatures" of the persons filling a public office. The important result in this case is that by virtue of the notification in the *Gazette* the court can take judicial notice of the fact that the Assistant Government Agent (Emergency) for the area in question is the "competent authority"

for the purposes of the Regulations. I further think that the production of the *Gazette* is sufficient proof that the appointment in question has been made in writing.

The ground on which the Magistrate acquitted the accused cannot be supported. I set aside the order of acquittal and send the case back to the Magistrate. If the Magistrate who tried the case is still available, he will deal with the other matters of defence raised in the case and record his verdict. It is open to him if he so desires to hear further argument on these matters raised. If the Magistrate who tried this case is not available the case will be tried *de novo*.

*Set aside.*

