1947 *Present :* **Howard C.J.**

MOHAMED & CO., Petitioner, *and* THE CONTROLLER OF TEXTILES, Respondent.

S. C. 75—Application for a Writ of Certiorari *on the Controller of Textiles.*

Certiorari—*Defence (Control of Textiles) Regulations—Cancellation of licence—Regulation 62—Dealer not heard in his defence—Controller not acting judicially—Rule absolute.*

Where the Textile Controller acting under regulation 62 of the Defence (Control of Textiles) Regulations cancelled the licence granted to the petitioner on the ground that a fraud had been committed by him without giving the petitioner an opportunity of being heard in his defence—

Held, that a writ of *Certiorari* would lie.

APPLICATION for a writ of *Certiorari* on the Controller of Textiles.

H. V. Perera, K.C. (with him *C. Suntheralingam*), for the petitioner.

H. W. R. Weerasooriya, C.C. (with him *Walter Jayawardene, C.C.*, and *Douglas Jansze, C.C.*), for the respondent.

Cur. adv. vult.

September 19, 1947. HOWARD C.J.—

The petitioner who is a dealer in textiles applies for a mandate in the nature of a Writ of *Certiorari* under section 42 of the Courts Ordinance against the respondent, the Controller of Textiles, quashing an order of the respondent made under regulation 62 of the Defence (Control of Textiles) Regulations, 1945. This order is contained in a letter to the petitioner dated February 21, 1947, and revoked the petitioner's licences granted under the Regulations. The facts leading up to the order quashing the licences of the petitioner are set out briefly as follows. On or about February 13, 1947, the officers working in the Department of Textiles made certain inquiries into an alleged shortage of textile coupons aggregating to 40,000 points in respect of the textile coupons surrendered on behalf of the petitioner to the Textile Coupon Bank on November 30, 1946, and December 18, 1946. On November 30, 1946, the petitioner's firm surrendered textile coupons to the Coupon Bank. According to the foil and counterfoil of the paying-in slip 21,500 coupons were surrendered. The foil and counterfoil of this paying-in slip are both initialled by the representative of the petitioner's firm, one Peter Fernando, and three departmental officers, namely, a Staff Assistant, the Shroff and the Ledger Clerk. On December 18, 1946, further coupons were surrendered by the petitioner's firm amounting according to foil and counterfoil of the paying-in slip to 22,000 coupons. On this occasion the foil and counterfoil were signed by Peter Fernando,

the same Staff Assistant, the acting Shroff and a different Ledger Clerk. The procedure followed by the department after the surrender of coupons is as follows. The Receiving Clerk counts the coupons and checks the number received with the number entered in the paying-in slip. He then enters the number in a Scroll Book and obtains the signature of the depositor. After this he passes on paying-in slips together with coupons to the Assistant Shroff. The latter officer checks the numbers of the coupons, initials paying-in slips and passes to the Shroff without the coupons which are sent elsewhere for cancellation. The Shroff enters in a register the number of points as they appear in the paying-in slip, signs foil and initials counterfoil and passes them to the Chief Clerk. The Chief Clerk also goes through the formality of countersigning foil and counterfoil and enters in the Credit Control Book the number of points appearing in the paying-in slip. He then detaches foil of paying-in slip which he passes to the Ledger Clerk and at the same time returns to the dealer the counterfoil. The Ledger Clerk enters in the dealer's ledger as a credit the number of points appearing in the foil. In regard to the surrender of coupons by the petitioner's firm on the two dates in question the numbers credited to the firm in the ledger account agree with the numbers purported to have been surrendered according to the foil and counterfoil. On the other hand according to the Scroll Book only 1,500 coupons were surrendered by Peter Fernando on November 30, 1946, and 2,000 coupons on December 18, 1946. Perusal of the foils and counterfoils suggested that interpolations had been made, the figures "1,500" having been converted into "21,500" and the figure "2,000" into "22,000". The Textile Controller in view of these discrepancies in the documents providing for the accounting of the coupons that had been surrendered by the petitioner's firm came to the conclusion that the firm had been credited with 40,000 more coupons than had been surrendered. On discovering this irregularity he wrote a letter to the petitioner's firm dated February 18, 1947 (referred to as "B" in petitioner's affidavit). This letter was worded as follows :—

"Control of Textiles Office,
P. O. Box No. 538, Colombo.

My No. CR. C. 691/4324 of 18th February, 1947.

Messrs. H. A. N. Mohamed & Co.,
209/211, Main St., Colombo.

Gentlemen,

An examination of your account in the Coupon Bank and the supporting documents and registers has revealed the following irregularities :—

(1) Whereas according to the scroll book kept by the Counter Clerk who receives coupons from depositors, and according to the registers kept by the Shroff and the Assistant Controller respectively, the number of coupon points surrendered by

you on the undermentioned dates were as shown in column (2) below, your ledger account has been credited on the same dates with amounts as shown in column (3).

(1) Dates	(2) Points surrendered according to registers kept by the Counter Clerk, Shroff and Assistant Controller	(3) Points credited in your Ledger Account
On 30.11.46 ..	1,500 ..	21,500
On 18.12.46 ..	2,000 ..	22,000

(2) On inspecting the corresponding paying-in slips submitted by you along with the coupons it is found that interpolations have been made on these slips (on foils and counterfoils both), in figures as well as letters, so as to show the bigger amounts as credited in the Ledger Account. The interpolations and the original entries appear to be in the same writing.

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.

2. If you have any explanation to offer in respect of these matters in addition to what you have already stated to the Assistant Controller, please send it to me in writing on or before 4 p.m. on Thursday, 20th February, 1947.

3. If you desire to see the documents referred to above you may do so at this office at any time during office hours on application to my Office Assistant.

I am, Gentlemen,
Your obedient Servant,
Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles."

The petitioner's firm on receipt of this letter consulted their legal adviser who replied to "B" by a letter dated February 20, 1947, (marked "C"). This letter took the form of denying the allegations made against the petitioner. The submission was made that inspection of the relevant documents indicated a colossal fraud by the officers of the Textile Department who it was also suggested had corrupted Peter Fernando, the employee who had surrendered the coupons. The letter disclaimed any awareness on the part of the petitioner of anything amiss in the work of Peter Fernando who after failing to give any explanation had disappeared and could not be traced. The petitioner also maintained that it would be unfair and unjust to revoke his licence when it was impossible to say whether the fraud was committed entirely by the officers of the department acting by themselves alone or with

complicity on the part of one of the petitioner's employees. The petitioner further maintained that his books showed that all the coupons indicated by the paying-in slips had been surrendered. On February 21, 1947, the respondent cancelled the licences of the petitioner in a letter marked "D" which is in the following terms :—

"Control of Textiles Office,
P. O. Box 538, Colombo.
My No. CR C 691/4324 of 21.2.1947.

Messrs. H. A. N. Mohamed & Co.,
Colombo.

Sirs,

With reference to my letter No. CR C 691/C 691 of 18.2.47 and the letter of 20.2.47 submitted by your lawyers, I find you a person unfit to hold a textile licence. I therefore order the revocation of all the licences held by you to deal in textiles under Reg. 62 of the Defence (Control of Textiles) Regulations, 1945, with effect from 21. 2. 1947, i.e., your licences No. 691/C 691 and No. 696/C. 696.

2. Please hand over to my officer your licence, Identity Card, Coupon Issue Card, Coupon Account Register and any coupons you may have in your possession.

3. You are also informed that you can keep any of your own stocks in your possession for 15 days after the date of revocation. Meanwhile, if you can make suitable arrangements to deliver the goods to another dealer, on such terms as you like, I shall sanction the transfer before that date on condition that :

(1) you surrender the remaining coupons in your hand and the coupons you obtained by the sales with my sanction.

(2) The transferee surrenders the coupons for the goods transferred. Possession of the goods after 15 days will be regarded as unlicensed possession and the goods will be seized and a prosecution entered.

I am, Sirs,
Your obedient Servant,
Sgd. M. F. DE S. JAYARATNE,
Controller of Textiles."

Mr. H. V. Perera on behalf of the petitioner contends that regulation 62 of the Defence (Control of Textiles) Regulations, 1945, under which the respondent acted did not entitle him to cancel the licences of the petitioner. Regulation 62 is worded as follows:—

"62. 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."

Mr. Perera has referred to paragraph (2) of "B" in which the respondent states "I have reason to believe that you got these interpolations made

and contrived to obtain on the Ledger Account credit for a bigger amount than you were entitled to on the basis of the coupons surrendered by you." Mr. Perera maintains that the respondent had no reasonable grounds for this allegation. Such grounds have not been disclosed by the respondent so that the petitioner might have an opportunity of meeting them. In these circumstances the allegation rests only on suspicion. Suspicion is not, to use the words of the regulation "a reasonable ground" on which to base the Controller's belief that the licensee is unfit to be allowed to continue as a dealer and hence to cancel the licence.

Although by inference from "B" and "D" the cancellation purported to be made on the allegation that the petitioner contrived these frauds, Mr. Weerasooriya, on behalf of the respondent, has contended in this Court that the latter was justified in cancelling the licences by reason of the fact that the petitioner employed a dishonest employee to surrender the coupons to the Coupon Bank. In reply to this contention Mr. Perera argues that the unwitting employment of a dishonest employee would not be a sufficient ground under the regulation for cancelling the licences. The words of the regulation are that the "dealer" and not his employee should be deemed to be unfit to be allowed to continue as a dealer. Mr. Perera has also pointed out that this was not the ground on which the respondent purported to act and if it was, the petitioner has not been given any opportunity of meeting this allegation. Mr. Weerasooriya has further contended that the petitioner was given every opportunity of showing cause against the cancellation of the licence. He maintains, moreover, that it is not open to this Court to inquire into the materials or sufficiency of the materials on which the respondent reached his conclusion. In this connection Mr. Weerasooriya has cited the case of the *King v. Nat Bell Liquors Ltd.*[1] in which it was held that a conviction by a Magistrate for a non-indictable offence cannot be quashed on *certiorari* on the ground that the depositions show that there was no evidence to support the conviction or that the Magistrate has misdirected himself in considering the evidence. Absence of evidence does not affect the jurisdiction of the Magistrate to hear the charge. The same principle was laid down in *R. v. Furnished Houses Rent Tribunal for Paddington and St. Marylebone.*[2].

In *Abdul Thassim v. Edmund Rodrigo*[3] it was held by a Court constituted by five Judges of the Supreme Court that the fact that the Controller can only act under regulation 62 when he has "reasonable grounds" indicates that he is acting judicially and not exercising merely administrative functions. He is therefore amenable to a mandate in the nature of a Writ of *Certiorari*.

In the circumstances the question I have to decide is whether the Controller in cancelling the licences of the petitioner has acted judicially. Mr. Weerasooriya has invited my attention to the fact that, whereas regulation 62 fails to provide for the observance of any procedure by the Controller, regulation 58 does so provide. Mr. Weerasooriya also points

[1] *(1922) 2 A. C. 128.*
[2] *(1947) 1 All England Reports 448.*
[3] *(1947) 48 N. L. R. 121.*

out that regulation 63 provides the Textile Controller with an Advisory Board, but he is under no obligation to seek the advice of this Board when action for the cancellation of a licence is taken under regulation 62. Mr. Weerasooriya refers to these provisions in order to show that the Legislature did not intend to fetter the discretion of the Controller when it was a question of cancellation of licences. After taking into consideration the various submissions by Mr. Weerasooriya can it be said that the Controller has acted judicially? The principles on which a tribunal not having the status of a Court of Law should act have been laid down in the judgment of Lord Haldane L.C. in *Local Government Board v. Arlidge*[1]. This case dealt with the duties of a tribunal when the duty of deciding an appeal is imposed. At page 132-133 Lord Haldane stated as follows :—

"My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice*[2] he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their

[1] *(1915) A. C. 120.* [2] *(1911) A. C. 179.*

view. If the Board failed in this duty, its order might be the subject of *certiorari* and it must itself be the subject of *mandamus.*"

At page 134 Lord Haldane also stated :—

"What appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other standard which was laid down for such cases in *Board of Education v. Rice* (*supra*). I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had. Moreover, I doubt whether it is correct to speak of the case as a *lis inter partes.*"

One of the principles formulated in *Local Government Board v. Arlidge* (*supra*) was that the tribunal must give the parties an opportunity of stating their case or in the words of Lord Haldane "a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view." This same principle was emphasised in the case of *Hopkins v. Smethwick Local Board of Health*[1] in which it was held that, where a building has been erected in contravention of the bye-laws of a local board of health, the board cannot under section 158 of the Public Health Act, 1875, pull down the building without giving the owner an opportunity of showing cause why it should not be pulled down. I have also been referred to the case of *A, a Pleader v. The Judges of the High Court of Madras*[2] in which it was held that charges of professional misconduct must be clearly proved and should not be inferred from mere ground of suspicion.

Applying the principles formulated in the cases to which I have referred I am of opinion that, inasmuch as the grounds on which the respondent had come to the conclusion that the petitioner "had got the interpolations made and contrived to obtain in the Ledger Account credit for a bigger amount than he was entitled to on the basis of the coupons surrendered by him" had not been disclosed to the petitioner, the latter had not been given a fair opportunity of stating his case. Moreover it would appear that the respondent condemned the petitioner merely on suspicion. If the grounds were as stated in document "B" the respondent has not acted judicially. On the other hand, if the respondent cancelled the licences because the petitioner employed Peter Fernando, a dishonest employee, the respondent cannot be said to have acted judicially inasmuch as this was not the ground on which he purported to act and moreover the petitioner has not been given an opportunity of stating his casee if such was the ground on which action was taken.

For the reasons I have given I direct that the rule *nisi* be made absolute and that Writ of *Certiorari* issue as prayed by the petitioner in his petition dated February 25, 1947, together with costs.

Rule made absolute.

[1] *24 Q. B. D. 712.*

[2] *(1930) A. I. R. P. C. 144.*