1947 *Present :* **Canekeratne J.**

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

S. C. 115—Application for a Writ of Certiorari on the Controller of Textiles.

Certiorari—*Cancellation of textile licence—Inquiry—Sufficiency of evidence—When Court will interfere—Defence (Control of Prices) Regulations—Regulation 62.*

Where the Textile Controller acting under regulation 62 of the Defence (Control of Textiles) Regulations after inquiry into allegations against the petitioner cancelled his licence on the ground that he was found to be unfit to hold a licence—

Held, on application for a writ of *certiorari,* that his decision could not be challenged on the ground that the evidence was insufficient. The Court would not interfere unless it was shown that the Controller had either broken a rule laid down by the regulations under which he acted or that he had failed to pay due regard to the dictates of natural justice.

[1] *(1938) 39 N. L. R. 457.*

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

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

Walter Jayawardene, C.C., for the respondent.

Cur. adv. vult.

October 8, 1947. CANEKERATNE J.—

This is an application by the petitioner for a mandate in the nature of a writ of *certiorari* quashing the order made by the respondent by his letter dated March 10, 1947.

The petitioner is a partner of the firm of S. Mohamed Hussain & Co. which carried on business as textile dealers in the Pettah, Colombo, the other partner being Mohammed Hussain.

The firm of S. Mohamed Hussain & Co.—and I will call them the firm—sent to the office of the Controller certain textile coupons on two occasions for the purpose of surrendering them to the Coupon Bank. According to the petitioner these coupons were taken by his employee one Alliyar, with a paying-in slip consisting of foil and counterfoil. It appears, according to the affidavit of the respondent, that the firm was supplied with a paying-in book containing slips and that coupons are brought to the office with the book. The slip and the coupons were handed to a receiving clerk by Alliyar on November 30, 1946 ; this clerk counted the coupons and checked the number handed with that entered in the paying-in slip ; he then entered the number in a scroll book with various other particulars and obtained the signature of the depositor to the book. After this he passed on the paying-in slip together with the coupons to the Assistant Shroff. The latter checked the number of the coupons, passed the paying-in slip, foil and counterfoil, to the Shroff. The Shroff entered in a register the number of points as they appear in the paying-in slip, signed foil and initialled counterfoil to both of which he affixed the serial number 7,150 ; he passed them to the Chief Clerk. According to the affidavits of the receiving clerk, and the Shroff, the amount of coupons surrendered by the firm on this day was 669. On December 21, 1946, further coupons were surrendered by the firm amounting, according to the receiving clerk and Shroff, to 992 ; the same procedure was followed by them as on the first occasion ; the foil contains the signature of the officiating Shroff and of M. Aliyar, the initials of the Ledger Clerk and a Staff Assistant ; the counterfoil, the signature of the receiving clerk, initials of Shroff and of Staff Assistant. The serial number affixed to this was 7,415. The signatures and the initials of the officers appear on the foil and counterfoil in 7,150, too. The Staff Assistant is perhaps the Chief Clerk. The Chief Clerk, according to the affidavit of the Controller, countersigns the paying-in slip, detaches the foil of it which he passes to the Ledger Clerk and at the same time returns the book and counterfoil to the dealer ; the Ledger Clerk enters in the dealer's ledger account as a credit the number of points appearing in the foil. The number of points, that was entered in the firm's ledger account on the first occasion was 5,669, on the second occasion 2,992 and the foils and counterfoils now produced contain the amounts (in letters and figures) 5,669 and 2,992 coupons respectively.

The contentions advanced on behalf of the petitioner were that the Controller when he sent the notice dated February 22, 1946, took the view that he was an officer performing administrative duties, alternatively that he did not inform the firm the reasons on which he acted, or the grounds on which he proceeded to act and thus no opportunity was given to the firm to meet the case. The contentions on the other side were these; the person who was responsible for taking the *prima facie* view on February 22, was different from the one who made the order that was canvassed in the case of *Abdul Thassim v. Rodrigo*,[1] that officer had himself stated in the course of that order that he was performing administrative functions; the Controller was not acting on suspicion, he had not failed to give an opportunity to the firm to meet the charge, it was for the petitioner to show that there were facts—if such there be—which were not disclosed to him, this the petitioner has failed to allege, the firm was given an opportunity of examining the books and meeting all the evidence upon which the Controller acted.

By a notice sent by the Controller dated February 20, 1947, but served, according to the note on the notice (marked A 1 in the petitioner's affidavit), at 12 A.M. on February 22, the firm was prohibited from purchasing or selling any regulated textiles from or to any person without the previous written authority of the Assistant Controller of Textiles, Colombo Town—the prohibition to be valid for two weeks.

On February 22, 1947, the Controller sent a notice (letter marked B in the petitioner's affidavit) to the firm, it was served on the firm according to the note, at 12 A.M. on February 22. The letter gives information to the firm (*a*) that the number of coupon points surrendered by the firm on November 30, 1946, was 669, on December 21, 1946, was 992; (*b*) that the office books kept by the receiving clerk, the Assistant Controller and the Shroff show that these were the amounts received on the two dates; (*c*) that interpolations have been made in the slips (the foils and counterfoils) in figures as well as letters so as to show that in one case 5,669 points were surrendered, in the other 2,992 points; (*d*) that the interpolations and the original entries appear to be in the same handwriting; (*e*) that the amounts credited in the ledger account of the firm were 5,669 and 2,992 points respectively whereas the amounts that should have been entered ought to be 669 and 992 respectively. The letter proceeds thus:—

> "I have reason to believe that you got these interpolations made with the object of obtaining in your ledger account credit for a larger amount than the amount you were entitled to on the coupons you actually surrendered.
>
> 2. If you have any explanation to offer in respect of these matters, please send it in to me in writing on or before 4 P.M. on Tuesday, the 25th instant.
>
> 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."

[1] (1947) 48 N. L. R. 121

It appears that the firm after receipt of the two letters sent Counsel to interview the Controller. It also appears that at some time probably before February 22, S. Mohamed Hussain, Nakkuda Ali, and Aliyar made statements to the Assistant Controller or to the Controller. The firm by its lawyer sent a reply (letter dated February 25, 1947, marked C) ; it stated that Nakkuda Ali, on the first mentioned date surrendered 5,669 points and entered up the paying-in slip in foil and counterfoil, on the second mentioned date he surrendered 2,992 points and entered up the paying-in slip in foil and counterfoil. " They were entered in the handwriting of my client, the proprietor, Mr. Nakkuda Ali. Invariably when the paying-in slips are handed over to the Coupon Bank, the signature of my client's employee, namely, M. O. Aliyar, is written in the slips. There were no interpolations when he wrote the paying-in slips and sent them to the Coupon Bank.

" Apparently what has happened is that someone else has destroyed these two paying-in slips and written out 2 fresh ones for lesser amounts, namely, 669 points on November 30, 1946, and 992 points on December 21, 1946, and subsequently interpolated the 5,000 and 2,000 respectively on the said dates.

"My client, nor any office employee of his is responsible for the writing of these fresh paying-in slips which contained interpolations. They are not in the handwriting of my client nor any of his employees. It is noteworthy that the interpolations slips do not contain the signature of my client's employee M. O. Aliyar.

" When the paying-in slips and the coupons are surrendered, the signature of my client's employee (M. O. Aliyar) is obtained in a book kept by the Bank Clerk at the counter, sometime the amount is entered and my client's man puts his signature without verifying the actual amount of Coupons actually entered. Sometimes the amount is not entered immediately and the actual amount is entered by the Clerk subsequently. In these two particular instances one or the other of these things may have happened. "

Certain English authorities were referred to at the argument, also the decision of My Lord the Chief Justice in *In re application No. 75* (decided on September 19, 1947).[1] It was not disputed that the facts of the last case and of the present were not similar and that there was a distinction. Mr. Perera contended that the decision applies to the present case ; Mr. Jayewardene the contrary. The question is, how thin is the line dividing the realms of the two—is it so thin as to reach the vanishing point or is it so marked as to create a well defined distinction ? The respondent in both cases was the same, in both cases a larger number of coupons than the amount recorded as having been surrendered according to the registers kept by the receiving clerks, the Shroff and the Chief Clerk of the Coupon Bank was entered in the ledger account of the dealers. One of the impeached transactions in both cases is alleged to have happened on the same date. There the similarity ends.

Perusal of the foils and counterfoils suggests that interpolations have been made. It appears on an examination of the counterfoil of 7150 that a line drawn across the blank space below " S. M. Hussain & Co. "

[1] *Vide (1947) 48 N. L. R. 461—Ed.*

has been partly erased and the words " five thousand " have been written over it and that the slope and size of the letters in five thousand are different to those in " Six hundred and sixty-nine ". On March 10, 1947, the Controller sent the notice (marked D) to the firm. It states that the respondent finds the firm a person unfit to hold a textile licence. " I therefore order the revocation of your licence, under Regulation 62, with effect from March 10, 1947.

" 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 obtain 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. "

Regulation 62 is as follows :—" 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 ".

Information was given to the firm as to what the books at the office revealed in respect of the delivery of coupons on the two occasions, as to the condition of the paying-in slips and as to the addition of 7,000 coupons to their ledger account. The firm was informed what documents induced the Controller to form a *prima facie* view and that they were available for inspection and examination. One of the main questions the respondent had to decide was, did the firm surrender to the Coupon Bank 5,669 coupons on November 30, 1946, and 2,992 coupons on December 21, 1946 ? There was the entry in the scroll book kept by Sepala Rajapakse and in the register kept by K. A. D. Perera as regards the delivery on the former date, the entry in the scroll book kept by C. E. Rajapakse and in the register kept by Jayewardene as regards the later delivery ; statements made by these persons corroborating the entries in the books would also be before the Controller. On the other hand were the statements made by the petitioner, Mohamed Hussain and Alliyar. The respondent had these two versions before him at the time of the making of the order. He had also the signature of Alliyar to the scroll book on both occasions, the signature of Alliyar to the two foils (7150 & 7415) and the books in the office (the register kept by the Chief Clerk too). It is not surprising that the respondent did come to the conclusion that there was no delivery of 5,669 coupons or 2,992 coupons. He was entitled to believe one version in preference to the other. The other question the respondent had to decide was, did the firm get the interpolations made ? He had the statements made by the petitioner,

his co-partner and Alliyar, also the explanation given in letter C; on the other hand he had the documents already mentioned and the version given by the two Rajapakses, Perera, and Jayewardene. There were also the following circumstances:—(1) there was no delivery by the firm of 5,669 coupons or of 2,992 coupons; (2) who would benefit by the inaccurate entries in the ledger account—the firm, the Chief Clerk, some one else? The scarcity of textiles and the readiness with which they can be disposed of at high prices makes dishonesty abnormally profitable. A coupon point, it was asserted at the argument, was a salable article. On a sale of textiles a dealer must obtain the required number of coupons. If coupons were available at or near a dealer's shop, would-be purchasers of textiles would be considerably helped; (3) the firm has been credited with an excess of 5,000 coupons on the first occasion and 2,000 on the second; (4) when the paying-in book was returned the petitioner would see an increase in the number of coupons—for the firm did not send 5,669 or 2,992 coupons—he would further notice the interpolations in the counterfoil of 7150 and the writing on the other counterfoil. Could the respondent, on a consideration of these matters, and on the versions before him, not reasonably come to the conclusion that the firm got the interpolations made?

One thing is clear that the decision of the Controller is not impeachable in the Courts on the grounds on which a judicial decision might be impeached. It would be impossible for a person like the petitioner to attempt to get the decision set aside on the ground that the evidence at the inquiry, or the evidence put before the Controller in his quasi-judicial capacity was insufficient to support his decision. It cannot be challenged in the Courts unless he has acted unfairly in the sense of having while performing quasi-judicial functions, acted in a way which no person performing such functions, in the opinion of the Court, ought to act'[1]—unless he breaks a rule laid down by the regulations under which he acts or a rule laid down by the Court for the behaviour of a quasi-judicial officer, that is, unless he has failed to pay due regard to "the dictates of natural justice". "Eminent Judges have at times used the phrase 'the principles of natural justice'. The phrase is, of course, used in a popular sense and must not be taken to mean that there is any justice natural among men. The truth is that justice is a very elaborate conception; the growth of many centuries of civilization; and even now the conception differs widely in countries usually described as civilized . . . . The phrase can only mean in this connection the principles of fair play . . . that a provision for an inquiry necessarily imports that the 'person charged' should be given his chance of defence and explanation"[2]. There must be due inquiry. The person charged must have notice of what he is accused; he must have an opportunity of being heard. With respect to the charge made, the charge of which the firm had notice—this was not disputed—it is a charge of non-delivery of coupons on two occasions and of getting interpolations made; the particulars of the conduct alleged against it were brought to it attention and it was given an opportunity of sending an explanation

[1] *Johnson & Co., Ltd. v. Minister of Health* (1947) 2 A. E. R. 395, p. 400.
[2] *Maclean v. The Workers' Union* (1929) 1 Ch. 602, pp. 624, 625.

and of seeing the documents referred to in letter B. If one sees that the requisite conditions have been fulfilled by the authority which instituted the inquiry, the functions of a Court are at an end. It appears to me that the Court has no power to review the evidence any more than the Court has a power to say whether the authority came to a right conclusion.

Passages from the judgment in *Board of Education v. Rice*[1] and *Alridge v. Local Government Board*[2] were read at the argument. It is not amiss to refer to what Lord Greene M.R. said in a very recent case[3]:— "I ought, however, to refer to one matter, because Counsel for the respondent placed great reliance on it, viz., the well known observations of Lord Loreburn L.C. *in Board of Education v. Rice* (*supra*). I shall not read the passage but it is clear, to my mind, that Lord Loreburn was there dealing with a different type of matter from that which we have to deal here. He was dealing with something which was a *lis* in a much truer sense, because, as he said 'The Board is in the nature of an arbitral tribunal'. Apart from that his observations were not directed to the sort of statute we are dealing with, nor do I think the language which he used is in any way applicable to the consideration of the present case."

There has been no departure from the rules of "natural justice" in this case and the rule *nisi* must be discharged with costs.

Rule discharged.