

1947

Present : Dias J.

S. C. 76—IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE OF A WRIT OF *Certiorari* UNDER SECTION 42 OF THE COURTS ORDINANCE.

MOHAMED MIYA, Petitioner, and THE CONTROLLER OF TEXTILES, Respondent.

Certiorari—Cancellation of licence by Textile Controller—Reasonable grounds to believe that dealer is unfit to be allowed to continue—Judicial act—Powers of Supreme Court—Regulation 62 of Defence (Control of Textiles) Regulations.

Where the Textile Controller in the exercise of powers under Regulation 62 of the Defence (Control of Textiles) Regulations cancels a dealer's licence on the ground that he has reasonable grounds to believe that the dealer is unfit to be allowed to continue as a dealer, he acts judicially. In such a case the Supreme Court has power, on an application for a writ of *certiorari*, to examine whether the Controller had reasonable grounds for such belief.

A PPLICATION for a writ of *certiorari* on the Textile Controller.

H. V. Perera, K.C. (with him S. Nadesan), for the petitioner.

H. W. R. Weerasooriya, C.C., for the respondent.

Cur. adv. vult.

¹ (1911) A. C. 182.

² (1915) A. C. 120.

³ *Johnson & Co., Ltd. v. Minister of Health* (1947) 2 A. E. R. 395, p. 405.

October 2, 1947. DIAS J.—

The petitioner, who trades under the name of Cassim Stores in the Pettah, is the holder of a textile licence. By his order dated February 21, 1947, the Controller of Textiles (the respondent) purported to cancel the petitioner's licence under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945. In the case of *Abdul Thassim v. Edmund Rodrigo*¹ a Full Bench held that the Controller of Textiles when he exercises functions under Regulation 62 acts judicially, and is, therefore, amenable to a writ of *certiorari*.

The petitioner moves for a mandate in the nature of a writ of *certiorari* against the respondent to quash the order of February 21, 1947, on the ground that it was made without jurisdiction.

In order to appreciate the submissions made, it is necessary to set out the relevant facts.

It appears that textile dealers in the course of their trade accumulate textile coupons handed in by customers when they buy controlled textiles. These coupons once they have been exchanged for cloth are exhausted, and cease to be lawfully usable. In order to prevent fraud, every textile dealer has to keep books showing the quantity of cloth he sells and the number of coupons he accumulates in the process. These exhausted coupons the dealer has to send to the Controller's department where they are collected and "cancelled".

A rather elaborate office system has been evolved in order to prevent fraud. The dealer is supplied by the respondent with a paying-in book in foil and counterfoil—see exhibits E and F—in which the dealer has to note in letters and numerals the number of coupons which are sent to the Textile Controller's Department for cancellation. The dealer or his servant takes the paying-in book together with the coupons and hands them in to the Textile Controller's Department. A receiving clerk is then supposed to count the coupons and check the number of coupons with the figures given in the paying-in book of the dealer. He then enters the number of coupons received in what is designated the "scroll book" and obtains the signature of the dealer or his servant in the scroll book. He then sends the paying-in book (foil and counterfoil) to the Assistant Shroff. This officer recounts the coupons and again checks their number with the foil and counterfoil in the dealer's paying-in book, initials the foil and counterfoil, retains the coupons and sends the paying-in book to the shroff. The assistant shroff is expected to send the coupons "elsewhere" for "cancellation".

The shroff when he receives the paying-in book enters in his register the number of "points", i.e., the coupons appearing in the foil and counterfoil of the dealer's paying-in slip. He appends his own signature to the foil and counterfoil, enters in the credit control book the number of points appearing in the paying-in slips, detaches and retains the foil of the paying-in slip, returns the counterfoil and the paying-in book to the dealer or his servant, and sends the foil of the paying-in slip to the ledger clerk. This officer posts up in the dealer's folio of the ledger a credit entry of the number of points appearing in the foil. It is the

¹ (1947) 48 N. L. R. 121.

practice for the Textile Control Department from time to time to send a copy of this ledger folio to the dealer, so that the latter may check up his own books in regard to the number of coupons surrendered by him to the Textile Controller's Department.

There are two transactions involved in this case—one on September 24, 1946—exhibit E, and the other on October 3, 1946—exhibit F. In the scroll book and the shroff's register under the two dates are entered 1,000 and 2,000 textile coupons as having been handed in by the petitioner's servant, Peter Fernando, whose signature appears in exhibits E and F as well as in the scroll book. In the ledger kept by the Textile Controller, however, these figures have become 31,000 and 52,000 respectively—an excess of 80,000 textile coupons. If the foils and counterfoils of the paying-in books E and F are scrutinised, it is obvious that the words "Thirty-one thousand" and "Fifty-two thousand" are false entries. They originally read "One thousand" and "Two thousand" respectively, but in another handwriting the words "Thirty" and "Fifty" have been added in front of "one thousand" and "two thousand", and the numerals also could have been similarly falsified.

It is obvious, therefore, that a fraud of considerable magnitude has been in progress, whereby dishonest persons by such falsifications as in this particular case could have obtained possession of 80,000 used coupons, which if sold in the "black market" at Re. 1 per coupon would have enabled somebody to pocket Rs. 80,000. Peter Fernando, the servant of the petitioner, having taken E and F to the Textile Control Department and having signed the scroll book, could not have failed to observe that the counterfoils E and F, which were for 1,000 and 2,000 coupons respectively when he handed them in and received back the counterfoils of E and F, had been altered to 31,000 and 52,000. These counterfoils of E and F were taken by the Textile Controller from the petitioner's possession. We are not told whether the petitioner's books were checked, and if so, what entries they contained in regard to these two items. It is also to be noted that, although this fraud was detected early this year, up to date no action in the criminal courts has yet been taken against anybody, although the facts show that certain officers in the Textile Controller's Department and Peter Fernando must be involved in it. In fact, Peter Fernando is alleged to have disappeared.

So far as I can see on the materials before me, there is no proof that the petitioner was actually privy to this fraud, or that he in any way instigated or abetted his servant Peter Fernando, or personally profited by the fraud. It is, of course, a suspicious circumstance that a Pettah textile dealer should send paying-in slips for 1,000 and 2,000 coupons and receive back a falsified counterfoil for 31,000 and 52,000 coupons and fail to detect the fraud; but suspicion alone does not amount to proof—*R. v. Abeywickreme*¹.

Under Regulation 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". What evidence had the respondent to cause him to have "reasonable grounds to believe" that this petitioner was unfit to

¹ (1943) 44 N. L. R. at p. 259.

continue to act as a dealer? In his letter B dated February 18, 1947, the Controller says: (a) that according to the scroll book of the receiving clerk and the registers kept by the shroff and the Assistant Controller the number of coupons surrendered by the petitioner on the two dates were 1,000 and 2,000 respectively, whereas in the Controller's ledger the figures are 31,000 and 52,000 respectively; (b) the respondent further says that on inspecting the corresponding paying-in slips (E and F) submitted by the petitioner along with the coupons, it was found that interpolations had been made in the foil and counterfoil.

While everyone will be in agreement with what the respondent says, there is nothing in what is stated in (a) and (b) to implicate the petitioner with those falsifications or the consequent fraud. The respondent then proceeds: "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. *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". The petitioner was asked to show cause by February 20, 1947.

The petitioner's complaint is that the grounds (a) and (b) given by the respondent could not have given him "reason to believe" that the petitioner either caused the interpolations to be made in the paying-in slips, or that he contrived to obtain the falsification of the Controller's ledger. I agree with this submission. On the facts which I have detailed at some length, granting that Peter Fernando was a party to this fraud, there is no evidence to show that the petitioner was either privy to it or aided or abetted it. It is to be noted that the document B must have been carefully drafted. The respondent does not say "Therefore I have reason to believe, &c.". He could not have said that, because any intelligent person would realise that that paragraph does not flow from or follow as a necessary consequence from the grounds (a) and (b). There is, therefore, force in the submission made by counsel for the petitioner that the respondent must have had some other undisclosed reason to believe that the petitioner caused the interpolations to be made and the ledger falsified. He submits that the failure to disclose those grounds and thereby failing to afford the petitioner an opportunity of meeting them, the respondent acted "unjudicially" and without jurisdiction and is therefore amenable to a writ of *certiorari*.

The answer of the respondent to this contention is that the conditions required by *Abdul Thassim v. Edmund Rodrigo (supra)* have been fulfilled, that the petitioner was given an opportunity of showing cause, that he did show cause, that the respondent then made a regular order, and that this Court cannot now canvass the grounds upon which the respondent called upon the dealer to show cause. In my opinion this submission is unsound.

The remedy afforded by the writ of *certiorari* is of a special character. It is available whenever an inferior judicial tribunal, or a statutory authority vested with judicial or quasi-judicial powers has acted without jurisdiction, or in excess of its jurisdiction. The Textile Controller is an administrative and not a judicial officer. It was held in *Abdul Thassim v. Edmund Rodrigo (supra)* that the Textile Controller when exercising

powers under Regulation 62 acts judicially. What then is his "jurisdiction"? Take the case of a Judge. The jurisdiction of a judicial officer has many facets. There is his territorial jurisdiction. There is his monetary jurisdiction. There is his capacity to try, his capacity to punish, &c. If a judicial officer acts in excess of any of these jurisdictions, or without jurisdiction, *certiorari* will lie to correct a misuse of his powers. If a Commissioner of Requests entertains an action for divorce, he clearly acts without jurisdiction, for no Court of Requests can entertain or determine a matrimonial action. In such a case the writ of *certiorari* will be available to quash that misuse of power. But assuming that a Commissioner of Requests entertains a plaint which he has the power to try, but proceeds to give judgment for the plaintiff or the defendant without hearing any evidence, in such a case the Commissioner of Requests is acting *with jurisdiction*, although he is exercising his jurisdiction *illegally* or *irregularly*. In such a case *certiorari* will not lie. The remedy of the aggrieved party is to appeal, or take some other step prescribed by law.

In the case of the Controller of Textiles his "jurisdiction" means the power or authority conferred on him by Regulation 62. When he decides to act under Regulation 62 he is bound to act judicially, and his "jurisdiction", power, or authority depends on the existence of the fact or facts which caused him to have "reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer". Until then he has no jurisdiction. *Subjectively* the respondent may have in his mind various reasons why he considers the petitioner to be unfit to continue as a dealer; but once he decides to invoke against the petitioner his jurisdiction under Regulation 62, it should be made to appear *objectively* the foundation upon which that jurisdiction rests, namely, that the respondent has reasonable grounds for his belief. If that condition is not made manifest objectively, I do not think it lies in the mouth of the respondent to say that this Court has no power to examine whether he had reasonable grounds for his belief, that is to say, to examine whether the respondent acted with or without "jurisdiction". The foundation of the respondent's jurisdiction depends on whether "he had reasonable grounds to believe" that this petitioner is unfit to continue as a dealer in textiles. It is on that and that alone the respondent's power and authority to act under Regulation 62 depends. If no reasonable grounds in that sense are apparent, then, in my opinion, the respondent acted without jurisdiction, and is amenable to a writ of *certiorari*. Applying these principles to the facts of this case, I am of opinion that the respondent acted without jurisdiction, and that *certiorari* is available.

It is admitted by counsel on both sides that the questions both of fact and law which arise in this case are covered by the judgment of Howard C.J. in *The Application for a Writ of Certiorari on the Controller of Textiles* (S. C. M. of September 19, 1947)¹. Except for certain minor details like the number of coupons involved, &c., it is common ground that there is nothing either on the facts or on the law to distinguish that case from the present case. Crown Counsel candidly admitted that what he is endeavouring to do is to persuade me that the judgment of the learned Chief Justice is erroneous. He concedes that if that judgment

¹ *Vide* (1947) 48 N. L. R. 461—Ed.

is right, the reasoning in that judgment would govern the present case. I have, therefore, attempted without reference to the earlier case to reach an independent conclusion in this case. Having done so, I may be permitted to say that I respectfully agree with the judgment of the learned Chief Justice.

I direct that the rule *nisi* should be made absolute with costs, and that the writ of *certiorari* applied for should issue.

Order made absolute.

