

1948

*Present : Dias J.*EDIRISINGHE, Petitioner *and* RAJENDRA, Respondent.

*S. C. 399*—APPLICATION FOR A WRIT OF *Certiorari* AND *Mandamus* ON  
THE ASSISTANT GOVERNMENT AGENT AND DEPUTY  
FOOD CONTROLLER, MATARA.

*Writ of Certiorari and Mandamus—Application by trader for writ on Food Controller—  
Is it a civil action?—Food Control Ordinance—Chapter 132—Section 7A.*

An application for a writ of *certiorari* and *mandamus* on the Food Controller is not a civil action within the meaning of section 7A of the Food Control Ordinance.

**A**PPPLICATION for a writ of *certiorari* and *mandamus*.

*N. K. Choksy, K.C., with E. D. Cosme and S. Wijesinha, for the petitioner.*

*H. W. R. Weerasooriya, Crown Counsel, with V. Tennekoon, Crown Counsel, for the respondent.*

August 2, 1948. DIAS J.—

The petitioner held an authority under the Food Control Ordinance, to deal wholesale in rice and other foodstuffs. He carried on this business at Kirinda in Matara. He also dealt in textiles. This latter business he carried on with the leave and licence of his brother in the adjacent premises.

On August 1, 1947, in the absence of the petitioner, the officers of the Food Control Department, as they were lawfully entitled to do, inspected the premises of the petitioner, and found everything in order. They then proceeded next door, and discovered a bag of rice. The petitioner swears in his affidavit that he knows nothing about this bag of rice, which he learnt had been deposited temporarily, not with any of his servants, but with Ratnatunga, his brother's servant, by a man named Charles, who intended to utilise it on the following day for feeding some Buddhist monks who were holding a retreat (*vas*). It is alleged that the Food Control officers were told these circumstances. They measured the rice and having sealed the bag directed Ratnatunga to preserve it in his custody. The petitioner says that the bag of rice is not his, that Ratnatunga is not his servant, and that he is not responsible for the acts or defaults of his brother's servant.

The petitioner states that he has heard that after the Food Control officers left, Charles came and wanted to remove the bag. Ratnatunga refused to allow him to do so, when Charles came with several *dayakayas* of the temple and forcibly removed the bag despite the protests of Ratnatunga, on the ground that the monks had to be given their meal. The submission for the petitioner is that no offence or contravention of any law or regulation had been committed by Charles leaving the bag of rice in his brother's boutique; that he is not responsible for the bag being there; and that, so far as he is concerned, the inspection of his premises where he sold rice and foodstuffs disclosed no irregularity.

On August 21, 1947, the respondent, who is the Deputy Food Controller, Matara, wrote the following letter P1 to the petitioner:

“With reference to your letter of the 2nd instant handed to me at the Kachcheri, I have the honour to inform you *that for allowing the bag of seized rice to be removed from your premises, I hereby revoke the authority granted to you under the Food Control Regulations, 1938, as a wholesale dealer, in terms of Regulation 18 (1) of Head E, Part III of the Food Control Regulations, 1938, read with Defence (Food Control) (Special Provisions) Regulations, 1943, with effect from September 20, 1947.*

2.....(Irrelevant).....”

The petitioner has not produced a copy of his letter dated August 2, 1947, to which reference is made in P1. His explanation is that he kept no copy of it. This may be true. On the other hand, the respondent in his affidavit R1 while referring to his letter P1, has not produced the petitioner's letter of August 2, 1947, and he does not refer to or explain in any way the connexion, if any, which exists between that letter and his reply P1. In the circumstances, this Court has to decide this case without the evidence which that letter may reveal. I agree with Mr. Weerasooriya, Crown Counsel, that, in the circumstances, no inference adverse or otherwise, to either party ought to be drawn from the nonproduction of the letter of August 2, 1947.

The petitioner submits that he has been punished by being deprived of his authority to trade although he has committed no offence, and without his being given any opportunity of being heard in his defence. This Court is asked by means of *certiorari* to declare that the respondent acted without jurisdiction, and by means of *mandamus* to compel the respondent to restore to him his authority to trade.

The Food Control Regulations, 1938, Head E, Part III, are to be found in the Subsidiary Legislation of Ceylon, 1941 Supplement. The Regulation 18 under which the respondent purported to act is to be found in the Defence (Miscellaneous) Regulations, and reads as follows :

18. (1) The Deputy Food Controller for any district or area may at any time, if he is satisfied that any authorized distributor or wholesale dealer has acted in contravention of, or failed to comply with any provisions of the Ordinance or of these Regulations, or of the Control of Prices Ordinance, No. 39 of 1939, or of any order or regulation made thereunder ; or, if he considers it expedient so to do in the interests of the public, by order revoke the authority granted, or the directions issued to that distributor or dealer under Regulation 5 in this Part.

(2) Every order made by any Deputy Food Controller under paragraph (1) of this Regulation shall be final and conclusive.

It will be seen that sub-section (1) of Regulation 18 creates two separate jurisdictions, namely (a) the authority or licence may be revoked if the Deputy Food Controller is satisfied that a distributor or wholesale dealer has done something wrong, and (b) where the Deputy Food Controller considers it expedient so to do in the interest of the public. It is common ground between the parties that if, in this case, the Court holds that the authority of the petitioner was revoked under jurisdiction (a), the order cannot stand, because the respondent acted without jurisdiction inasmuch as the petitioner was not afforded an opportunity of being heard in his defence. On the other hand, it is agreed that if the petitioner's authority was revoked under jurisdiction (b), this would be a purely administrative or departmental matter, and that the relief claimed cannot lie—see *Weeraratna v. Poulter*<sup>1</sup>.

The letter P1 from the respondent to the petitioner was written before the present proceedings were instituted. The respondent does not say that he was revoking the petitioner's authority because he considered it expedient to do so in the public interest. Had he said this, Mr. Choksy

<sup>1</sup> (1947) 48 N. L. R. 441.

for the petitioner admits that he would have no case. P1 clearly shows that the authority of the petitioner was not revoked on this ground, but because "he allowed the bag of seized rice to be removed from the petitioner's premises". In other words, he was being punished for an alleged wrongful act, which now turns out to be no wrongful act at all on the evidence and submissions made to me.

Learned Crown Counsel has argued that if the respondent had acted under the first part of Regulation 18 (1) he would have said so. He submits that the letter P1 shows that the respondent did not proceed on the footing that there had been any contravention of the law, because the keeping of a bag of rice is not an offence. He seeks to connect up the affidavit R1 filed after these proceedings began with P1 in order to show that the respondent acted under the second part of Regulation 18 (1). This is what R1 says:

"2. The letter marked P1 and annexed to the petitioner's affidavit was addressed by me to the petitioner.

3. I revoked on my own responsibility the authority granted to the petitioner . . . . as I considered it expedient to do so in the interests of the public in terms of Regulation 18 (1) . . . .

4. I exercised the power of revocation given to me by law in good faith after considering a report, the accuracy of which I had good reason to believe".

One has the right to expect that public officers who are entrusted with important functions like that of a Deputy Food Controller should be familiar with the laws and regulations which they have to administer. Questions similar to the one raised here have been frequently before the Courts, and it would, indeed, be strange that the respondent should not be aware of the principles involved when an authority like this is revoked. I find it difficult, if not impossible, to accede to the argument of Crown Counsel that the letter P1 indicates that the respondent was purporting to act under the second jurisdiction vested in him by Regulation 18 (1). Why did not the respondent, if he was acting under the second jurisdiction, say in his letter P1 that he considered it expedient in the interests of the public to revoke the petitioner's authority? Furthermore, the affidavit R1 is produced after the pinch of the case had been ascertained.

As I have already pointed out, section 18 (1) creates two separate and distinct jurisdictions available to the Deputy Food Controller. The first jurisdiction arises only when he "is satisfied" that there has been a breach or a contravention of the regulations. In such a case the officer acts judicially, and he cannot be said to be "satisfied" until he has given the petitioner an opportunity of being heard. The second jurisdiction, which is not cognizable by the Courts, arises "if he considers it expedient in the interests of the public" to revoke the authority or licence—see *Miya v. The Controller of Textiles*<sup>1</sup>. The letter P1 clearly shows that, rightly or wrongly, the respondent formed the view that the

<sup>1</sup> (1947) 48 N. L. R. at p. 496.

petitioner had acted irregularly in allowing a bag of rice which was under seizure to be removed from his premises. It was for that reason alone that the petitioner's licence was revoked. He was, therefore, not acting under the second jurisdiction created by section 18 (1). He was either acting under the first jurisdiction given him under section 18(1) or he was acting without any jurisdiction at all. If the former, it was his duty to give the petitioner an opportunity of being heard. Crown Counsel is unable to justify the respondent's action under the first jurisdiction. I agree. The respondent, therefore, was acting without any lawful jurisdiction at all. To condemn a person unheard offends against a cardinal principle of natural justice and the petitioner is entitled to seek his remedy in the Courts.

Crown Counsel argued that this Court had no power to issue a writ of *certiorari* or *mandamus* on the respondent in any event. Section 7A of the Food Control Ordinance (Chap. 132) provides that "No civil action or criminal prosecution shall be instituted or maintained against the Food Controller, or any Deputy or Assistant Food Controller or any other officer of Government in respect of any act *bona fide* done or omitted to be done in pursuance of any power or authority conferred or granted by or under this Ordinance or any regulation made thereunder". It is contended that writs of *certiorari* and *mandamus* are "civil actions" within the meaning of section 7A, and, because the action of the respondent was *bona fide*, this Court has no power to grant to the petitioner the relief he claims.

In *Subramaniam Chetty v. Soysa*<sup>1</sup> the majority of a Divisional Court held that a proceeding which resulted in a Fiscal's sale being set aside, was "an action" within the meaning of section 3 of the Appeals (Privy Council) Ordinance (Chap. 85). That section refers to "Civil suits or actions in the Supreme Court". In the case *In re Goonesinha*<sup>2</sup> this Court held where an application for a writ of *certiorari* against an Election Judge was refused, that an appeal lay to the Privy Council against such order because that proceeding was "an action" within the meaning of section 3. *Cf. Controller of Textiles v. Mohamed Miya*<sup>3</sup>. It is, therefore, submitted that because an application for a writ of *certiorari* or *mandamus* is "an action", therefore, the prohibition contained in section 7A of the Food Control Ordinance applies to bar the power of this Court to issue a mandate in the nature of *certiorari* or *mandamus* in order to correct any abuse of power or excess of jurisdiction on the part of officers in the Food Control Department. In my opinion, this submission is unsound. These proceedings may be "an action", but I cannot hold that they are "a civil action" within the meaning of section 7A of the Food Control Ordinance.

The petitioner's application is allowed ; but each party will bear his own costs.

*Application allowed.*

<sup>1</sup> (1923) 25 N. L. R. at p. 348.

<sup>2</sup> (1942) 44 N. L. R. 75.

<sup>3</sup> (1948) 49 N. L. R. 105.