

1947

Present : Dias J.

WEERARATNE, Petitioner, and POULIER, FOOD
COMMISSIONER, et al., Respondents.

S. C. 134—Application for a Writ of Certiorari and Mandamus
on the Food Commissioner and the Assistant Food Controller,
Kandy District.

Certiorari—Food Control (Special Provisions) Regulations, 1943—Section 18(1)
Revocation of authority given to “authorised distributor”—“If he
considers it expedient so to do in the interests of the public”—Does
Deputy Food Controller act in a judicial or an administrative capacity ?

¹ (1919) 21 N. L. R. 51.

² (1921) 23 N. L. R. 150.

³ (1925) 6 C. L. Rec. 149.

Section 18 (1) of the Food Control (Special Provisions) Regulations, 1943, empowered the Deputy Food Controller to revoke the authority given to an "authorised distributor" if he considered it expedient so to do in the interests of the public.

Held, that in acting under these powers the Deputy Food Controller was acting in an administrative capacity, and not in a judicial capacity, and that *certiorari* did not lie.

*Abdul Thassim v. Edmund Rodrigo*¹ (Five Judges) distinguished.

*Franklin v. Minister of Town Planning*² (House of Lords) considered.

A PPLICATION for writs of *certiorari* and *mandamus*.

E. B. Wickramanayake (with him *H. Samaranyaka*), for the petitioner.

No appearance for the respondent.

H. H. Basnayake, K.C., Acting Attorney-General (with him *Walter Jayawardene, Crown Counsel*), for the added respondent.

Cur. adv. vult.

September 17, 1947. DIAS J.—

Sec. 18 (1) of the Food Control (Special Provisions) Regulations, 1943, reads as follows:—

"18. (1) The Deputy Food Controller for any district or area may at any time, if he is satisfied that any authorised distributor has acted in contravention of or failed to comply with any provisions of the Ordinance, or of these Regulations or if he considers it expedient so to do in the interests of the public, by order revoke the authority granted to that distributor under Regulation 5 of this Part.

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

The petitioner is a trader carrying on business at Gampola in the Kandy district under the name of Weeraratna Bros. The added-respondent is the Deputy Food Controller for the Kandy district.

It is common ground that under section 5 (1) (b) of the Regulations the petitioner had been appointed an "authorised distributor" of rice and flour. The date of his authorisation has not transpired. On March 18, 1947, the added-respondent gave the petitioner notice by his letter marked "A" that the registration of his licence as an authorised distributor under the Food Control Scheme was cancelled with effect from March 31, 1947. The added-respondent followed this up by his letter marked "R1" to the following effect: "The revocation with effect from March 31, 1947, of the authority granted to you as an authorised distributor was made as I considered it expedient in the interests of the public in terms of Regulation 18 (1)" This letter is dated March 28, 1947. It is also common ground that before making these orders no notification was given to the petitioner of the intention to revoke his authority, nor was he afforded an opportunity of being heard or showing cause against the proposed revocation of his authority.

¹ (1947) 48 N. L. R. 121.

² (1947) 2 A. E. R. 239.

The original respondent has now dropped out of these proceedings, and no relief is claimed against him. When the added-respondent became a party to these proceedings he filed the affidavit "XI" where he repeats that he withdrew the authority granted to the petitioner because he considered it expedient in the public interest so to do, and added: "I exercised the power of revocation given me by law in good faith after considering a report in the accuracy of which I had good grounds to believe".

The case for the petitioner is that this case cannot be differentiated from the principle laid down by the Full Court in *Abdul Thassim v. Edmund Rodrigo*¹. It is contended that the petitioner was exercising judicial or quasi-judicial powers in this matter, and that as his authority was revoked without his being heard, the added respondent acted irregularly and without jurisdiction. It is submitted that by means of *certiorari* this Court will quash the order of the added-respondent, and by means of *mandamus* compel him to restore the authority to the petitioner.

The Attorney-General, on the other hand, contends that the added-respondent acted in an administrative and not in a judicial or quasi-judicial capacity, and that, therefore, the Courts have no jurisdiction to question the validity of an administrative act. It is also submitted that as Regulation 18 (2) makes the order of the added-respondent "final and conclusive", there is nothing further that can be done, and that the petitioner's remedy, if any, is to move the executive.

Section 18 (1) of the Regulations indicates that the Deputy Food Controller can revoke an authority (a) if he is satisfied that an authorised distributor has done something wrong or irregular and (b) "if he considers it expedient so to do in the interests of the public". It is clear that in revoking the petitioner's authority the added-respondent was acting under (b). The question, therefore, is whether the added-respondent, when he withdrew the petitioner's authority because he considered it expedient in the interests of the public so to do, was acting in an administrative capacity, or in a judicial or quasi-judicial capacity? It is not denied that if he was acting in the latter capacity, the order cannot stand. It is equally clear that if the added-respondent was acting in an administrative capacity, this application must fail.

The question whether a public servant acted in an administrative capacity or in a judicial or quasi-judicial capacity was considered by Soertsz J. in *Dankoluwa Estates Co. v. The Tea Controller*. In that case the Tea Controller was empowered "If it appears in him that an error has been made . . . he may by order declare . . ." Soertsz J. said "No duty is laid upon him expressly or by implication to hold an inquiry, and to give the parties concerned an opportunity to be heard, and the section takes care to say that what he is called upon to do is by order to declare, not to decide . . . It is of course undoubted that persons and bodies called upon by statute to perform ministerial and administrative functions, are expected to act, and almost invariably do act "judicially" in one sense of that word, but they are not acting "judicially" in the meaning that word bears in the phrase

¹ (1947) 48 N. L. R. 121.

² (1941) 42 N. L. R. at p. 207.

'under a duty to act judicially'". This decision was considered by the Full Court in *Abdul Thassim v. Edmund Rodrigo* (*supra*) and was distinguished, because in the latter case the duty of the public servant concerned was held to be of a judicial or quasi-judicial nature.

The matter came before the House of Lords in the case of *Franklin v. The Minister of Town Planning*¹. The question was whether Section 1 and Schedule 1 of the New Towns Act, 1946, conferred judicial or administrative powers on the Minister for Town and Country Planning. This minister during the second reading of the Act had made certain public speeches which were alleged to show that he was biased in regard to a certain order he subsequently made when the Act became law. It was held by the House of Lords that no judicial or quasi-judicial duty was imposed by the Act on the Minister whose duties under the relevant provisions were purely administrative. Therefore any reference to judicial duty or bias was held to be irrelevant in that case.

There are local cases which afford some guidance in this matter. Under sections 118 and 119 of the Civil Procedure Code the duty is imposed on District Judges and Commissioners of Requests of appointing "sworn translators" to their Courts. The Judge selects a proficient person who takes the oath of office and to whom the Judge issues a certificate. When a Judge revoked the authority given to a sworn translator, the Supreme Court refused to interfere on the ground that the matter was an administrative and not a judicial act.—*In re a Sworn Translator*². Under the Income Tax Ordinance the Commissioner is empowered to approve of persons who are styled "authorized representatives". When the Commissioner revoked the authority given to such a person the Supreme Court refused to interfere. It was held that the Commissioner was not bound either to frame a charge or to hold an inquiry before withdrawing the authorisation—*Value v. Commissioner of Income Tax*³. See also the observations of Canekeratne J. in the recent case of an application for writs of *certiorari* and *mandamus* on the Local Government Service Commissioner (*S. C. Minutes of September 15, 1947*).

No general rule can be formulated to govern every case. It is a question for decision in each case whether the powers conferred by the statute or regulation are judicial or administrative. It may be that under the first part of section 18 (1) the Deputy Food Controller when making an order thereunder acts in a quasi-judicial capacity. It is unnecessary in the present case to consider this aspect of the matter, as the addressee acted under the latter part of section 18 (1).

In my opinion the powers conferred by the latter part of section 18 (1) of the Regulations confer administrative and not judicial or quasi-judicial powers. When an "authorised distributor" is appointed he is not given a licence, but merely an authority. Under section 5 (1) (b) of the Regulations the Deputy Food Controller is empowered to "authorise a sufficient number of persons to be authorised distributors". Assume that in January the Deputy Food Controller considers that fifteen authorised distributors are necessary, but in March he forms the

¹ (1947) 2 A. E. R. at p. 295.

² (1932) 12 C. L. Rec. xciv.

³ (1943) 45 N. L. R. 6.

view that the number should be reduced to five. It seems to be unreasonable to expect the Deputy Food Controller to issue ten notices to those he wants to discontinue and call upon them to show cause why they should not be discontinued. Such a requirement would bring the administration of the Food Control system to a virtual standstill. No authorised distributor has the right to assume that his appointment once made can continue indefinitely or until control is finally terminated.

I hold that the powers conferred on the added-respondent under the latter part of section 18 (1) are not judicial or quasi-judicial, but are of an administrative character to enable him to carry out the Food Control regulations efficiently in the public interest. In this case the petitioner was given reasonable notice of the withdrawal of his authority. If he considers that he has a grievance it is to the executive and not to the Courts that he must apply for redress.

The application fails, and the rule *nisi* must be discharged with costs.

Rule nisi discharged.
