

## SUPREME COURT.

GWAN KEE (APPLICANT)

v.

THE UNION OF BURMA (RESPONDENT).\*

†S.C.  
1949

July 20.

*Sea Customs (Amendment) Act, 1949, s. 2 (b)—Order of the President—  
Authentication under s. 121 of the Constitution.*

The Collector of Customs seized certain rice on the ground that it was being smuggled out of Burma and imposed a penalty on the owner of the rice and ordered confiscation of the rice. On appeal, the order of the Collector was set aside by the Financial Commissioner. In the meantime the Collector had sold the confiscated rice. After the decision of the appeal the Collector offered to return the price obtained by the sale. The owner of the rice claimed a larger sum and filed a suit in the High Court; after the institution of the suit some Preventive Officers filed an application to His Excellency the President of the Union of Burma to revise the order of the Financial Commissioner. The President, in the purported exercise of the power conferred by s. 191 of the Sea Customs Act set aside the order of the Financial Commissioner and restored that of the Collector. Thereafter the Sea Customs (Amendment) Act, 1949, was passed. It provides that the Act shall be deemed to have come into force on the 4th day of January 1948, and s. 2 (b) of the amended Act provides that the President of the Union may at any time call for the records of any case disposed of by any Officer of Customs or the Chief Customs Authority and he may make such order as he thinks fit.

*Held* : That in view of the Sea Customs (Amendment) Act, 1949, provisions ss. 1 and 2 (b) the President had jurisdiction to pass the order he did even though his act might not have come under s. 191 of the Sea Customs Act.

*Held further*: That authentication order issued by the President under s. 121 of the Constitution provides that orders and instruments made and executed in the name of the President shall be signed by the Secretary, Additional Secretary, the Deputy Secretary or Under Secretary or the Assistant Secretary to the Government of the Union of Burma in the Ministry concerned and therefore when the Secretary signs the order concerned as "BY ORDER" the order has been properly passed.

*Dr. Thein* for the applicant.

*Chan Hloon* (Attorney-General for the Union of Burma) for the respondent.

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\* Civil Misc. Application No. 3 of 1949.

† Present : SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

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The judgment of the Court was delivered by the Chief Justice of the Union.

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SIR BA U.—The facts essential for the purpose of this case are, briefly stated, these. Acting on information received that 3,000 bags of rice would be smuggled out of Burma a party of five Preventive Officers of the Customs Department headed by Mr. Todd, Preventive Inspector, went down the Rangoon river on the 17th November 1947 at about 2 p.m. in a launch and found eight large sampans loaded with 2,019 bags of rice, with six Chinese merchants and fifty Indian coolies on board, lying at anchor at the mouth of the Bassein creek. The Preventive Officers boarded the sampans and interrogated the Chinese and the coolie maistry but received no satisfactory replies. While they were there, a motor schooner appeared on the scene and anchored a little way up stream. The Preventive Officers boarded the schooner and on checking up the Port Clearance Certificate they found that the schooner had left Johore about ten days previously. They also found 100 bags of sago flour on board the schooner, which was not covered by any import licence. In these circumstances the Preventive Officers seized the rice and took it to Rangoon. The Collector of Customs then issued a notice to the owner, Gwan Kee, now applicant before this Court, calling upon him to show cause why the rice should not be confiscated and why he should not be fined. Gwan Kee offered an explanation but the Collector was not satisfied with it. He ordered the confiscation of the rice and imposed a penalty of Rs. 50,000 on the applicant. The applicant paid the fine and then lodged an appeal with the Financial Commissioner, Commerce, against the order of the Collector of Customs. The Financial

Commissioner set aside the order of the Collector and directed the refund of the fine and confiscated rice. The fine was refunded but the rice was not returned as it had in the meantime been sold by the State Agricultural Marketing Board under the instructions of the Collector. The applicant thereupon asked for the payment of the price of the rice which he valued at Rs. 1,05,071 but the Collector agreed to pay Rs. 55,705-3-0, which, the Collector said, was the price fetched by the sale of the confiscated rice. Thereupon the applicant filed a suit in the High Court claiming Rs. 1,05,071 together with interest at 1 per cent per month and other incidental charges. Soon after the institution of the suit, the five Preventive Officers who were concerned in the seizure of the applicant's rice applied to His Excellency the President to revise the order of the Financial Commissioner. His Excellency the President, in purported exercise of the power conferred by section 191 of the Sea Customs Act, set aside the order of the Financial Commissioner and restored that of the Collector. The present application was therefore filed, praying for the issue of directions in the nature of a writ of certiorari to the Government of the Union of Burma in the Ministry of Finance and Revenue to submit the proceedings resulting in the order of the President setting aside that of the Financial Commissioner and restoring that of the Collector and thereafter to quash the said proceedings.

As has been pointed out by this Court on several occasions, the writ of certiorari deals with the question of want of jurisdiction or excess of jurisdiction. If the authority whose order is impugned by means of the writ of certiorari had jurisdiction to deal with a certain matter and dealt with it, this Court would not interfere even though it might not agree with the said authority on questions either of law or fact or of both. We are

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therefore in the present case not concerned with the merits of the applicant's case. All we have to consider is whether His Excellency the President had jurisdiction to interfere with the order of the Financial Commissioner on the application of the aforesaid five Preventive Officers. This question might prove to be a somewhat difficult question to solve if section 191 of the Sea Customs Act had not been amended by the Sea Customs (Amendment) Act, 1949. Section 1 of the amending Act says :

" 1. This Act shall be deemed to have come into force on the fourth day of January 1948."

As the Act must be deemed to have come into force on the fourth day of January 1948, the procedure taken in the course of the proceedings now under discussion must be deemed to be the procedure taken under the said amending Act.

Section 2 (b) of the amending Act says :

" (b) the President of the Union may, at any time and on application or otherwise, call for the record of any case disposed of by any officer of Customs or the Chief Customs Authority for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order made and may make such order as he thinks fit."

Under this section the President had jurisdiction to call for the record of proceedings from the Financial Commissioner on his own motion or on the motion of the aforesaid five Preventive Officers, even though they might not be 'aggrieved persons,' as submitted by the learned Counsel for the applicant, and set aside the order of the Financial Commissioner.

The learned Counsel for the applicant, however, submits that even though the procedure adopted in the proceedings now under discussion must be deemed in law to have been taken under the amending Act,

the order purporting to be the order of the President was in fact not passed by the President but by some one in the Finance and Revenue Department, presumably by one of the Secretaries in that Department. In support thereof the learned Counsel refers to certain orders signed by one of the Secretaries. What evidently has been overlooked is the authentication order issued by the President under section 121 of the Constitution, whereby orders and other instruments made and executed in the name of the President shall be signed by either the Secretary, the Additional Secretary, the Deputy Secretary, the Under Secretary or the Assistant Secretary to the Union Government in the Ministry concerned.

The order of the President setting aside the order of the Financial Commissioner shows clearly that U Aung Myint, Secretary in the Finance and Revenue Ministry, signed it in accordance with the above authentication order for he says that he signed it "By order."

Apart from this there is the sworn statement of U Aung Myint to show that the order was passed by the President himself and that he (U Aung Myint) signed it "By order."

The next and the last point urged is that the President exceeded his jurisdiction in passing the order which he did without issuing notice to the applicant and giving him an opportunity to offer an explanation in his defence. If the amending Act is referred to, it will be seen that only in the matter of review should notice be issued to the party likely to be affected by the result but in the matter of revision under section 2 (b) it is not necessary to issue notice.

For all these reasons the application is dismissed with costs ten gold mohurs.

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We may say that we have read the authorities cited by the learned Counsel for the applicant. As they have no bearing whatsoever on the points in issue in this case we have refrained from discussing them in the course of this order.