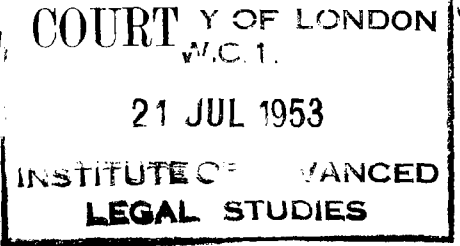


In the Privy Council

No. 34 of 1951.

ON APPEAL FROM THE SUPREME COURT OF CEYLON



BETWEEN

V. L. WIRASINHA, Commissioner for the Registration of  
Indian and Pakistani Residents, Colombo ... APPELLANT

AND

MOHIDEEN ABDUL CADER BADURDEEN ... RESPONDENT.

CASE FOR THE APPELLANT

RECORD

1.—This is an Appeal from a Decree dated the 24th May, 1951, of the Supreme Court of Ceylon (Basnayake, J.) allowing an Order dated the 7th July, 1950, of the Appellant, whereby the Appellant refused the Respondent's application for registration as a citizen under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949.

2.—The Act requires an application for registration to be in a prescribed form containing all relevant information for which the form provides, supported by affidavits of the applicant which may be supplemented before disposal of the application by affidavits from other persons. In the case of a married man with a living wife not divorced from him and with minor children, his application is only to be granted by the Appellant if satisfied that the applicant :—

- (1) is an Indian or Pakistani resident in Ceylon ;
- (2) was for seven years prior to the 1st January, 1946, and thereafter until his application uninterruptedly so resident, apart from occasional absences ;
- (3) is able to support himself and his dependants ;
- (4) understands certain effects of his being registered as a citizen of Ceylon ;

p. 18  
p. 11

In pocket

RECORD

and further that :—

(5) the applicant's wife has been ordinarily resident in Ceylon ;

(6) each minor child dependent on the applicant was ordinarily resident in Ceylon while being so dependent ;

(7) no disability or incapacity renders it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon.

3.—Of the above conditions the Respondent admittedly satisfied the first four and the last. The question in the Appeal is whether the Supreme Court was right in holding that he had also satisfied the other two. 10

p. 27, ll. 3-20  
pp. 1-7

4.—The Act came into force on the 5th August, 1949. On the 4th January, 1950, the Respondent wrote to the Appellant enclosing an application, in proper form, for the registration under the Act as citizens of Ceylon of himself, his wife and his two minor children. The Respondent is an Indian resident in Colombo, and there has never been any dispute that he possesses the special residential qualification prescribed by Section 3 of the Act. In the schedule to his application he stated that his wife, whom he had married in 1938, had resided at his own address for the one year and five months immediately preceding the application, and at another address in Ceylon for three months ; and his two children, of whom one was born in 1938 and the other in 1945, had resided in Ceylon for three months. (This, it appears, should have been eighteen months.) 20

p. 7

p. 27, ll. 24-30  
pp. 30-31

5.—With his application the Respondent submitted a joint affidavit of himself and his wife, in which they deposed that they were married on the 12th February, 1938, at Sathankulam in South India. He also submitted the birth certificates of his children showing that they were both born at Sathankulam.

p. 36, ll. 30-31

6.—The Appellant, in accordance with Section 8 of the Act, referred the application to an investigating officer for verification and report. The investigating officer made his report on the 31st January, 1950, stating *inter alia* that the Respondent's wife and children were with him at his address and had come to settle permanently in Ceylon in March, 1948. 30

p. 8

p. 9

7.—On the 6th February, 1950, the Appellant wrote to the Respondent informing him that he had decided to refuse his application on the ground that his wife and minor children had not been ordinarily resident in Ceylon. The Respondent's proctor replied on the 2nd May, 1950, stating that the Respondent had cause to show against the refusal and asking the Appellant to hold an inquiry.

8.—The inquiry was held by the Appellant on the 26th June, 1950. The Respondent stated in evidence that his wife and children had paid visits to Ceylon, but because of housing difficulties did not settle there until March, 1948. They had never applied for Indian passports and it was his intention and theirs that they should remain permanently in Ceylon. In answer to the Appellant the Respondent said the reason for his wife not coming to Ceylon in the period 1938 to 1942 was not the housing difficulty but the wish of her and her parents that she should stay in India.

p. 10, ll. 10-14

p. 10, ll. 14-17

p. 10, ll. 19-22

9.—The Appellant made his order on the 7th July, 1950. He said he had decided in an earlier application that under the Act a wife should have been ordinarily resident in Ceylon from the 1st January, 1939, or the date of her marriage, and a child from the 1st January, 1939, or the date of his birth. The Respondent's wife and children had not been resident in Ceylon before March, 1948. It was not enough that they should have been ordinarily resident at the time of the application. The Respondent's own continuous residence was not enough to establish their ordinary residence, and the evidence of their visits to Ceylon before 1948 did not establish their ordinary residence before that date.

p. 11, ll. 4-12

p. 11, ll. 21-23

p. 11, ll. 23-31

10.—The Respondent appealed to the Supreme Court of Ceylon. In his Petition of Appeal, dated the 6th October, 1950, he set out the facts and also made the following allegations :—

pp. 12-13

(i) that it was a custom prevailing in the Respondent's community that a wife should stay with her parents for some time after marriage ;

p. 13, ll. 13-15

(ii) that while his children were in India they were maintained by his father-in-law.

p. 13, ll. 24-26

The Appellant submits that there was no evidence to support these allegations and that the Supreme Court should have ignored them in the determination of the Respondent's Appeal. The Appellant submits that the Act entrusts the decision on an application to the Appellant and that the Appeal to the Supreme Court (which by Regulation 9 made under Section 21 of the Act is by transmitting the Appeal to the registrar of the Court through the Commissioner) should be determined only on the material before the Appellant. The Respondent submitted in his petition of appeal that he had only to prove that his wife had been ordinarily resident in Ceylon at the time of the application, but had in fact proved that she had been so resident from 1939 ; that he had only to prove that his minor children dependent on him were ordinarily resident in Ceylon at the time of the application, but in fact they had been so resident while dependent on him.

p. 13, ll. 19-23

p. 13, ll. 29-34

pp. 14-17

p. 15, ll. 1-19

p. 15, l. 27—p. 16,  
l. 20

p. 16, ll. 24-37

p. 16, l. 38—p. 17,  
l. 9

p. 17, l. 44

11.—The Appeal was heard by Basnayake, J., who delivered a reserved Judgment on the 18th May, 1951. Having recapitulated the facts, the learned judge held that the Appellant's interpretation was supported neither by the Act nor by the canons of construction. He referred to dictionary definitions of the words and judicial dicta upon them. The Act did not require that a wife's residence should have begun at a given time, but it was clear that the question of residence had to be decided as at the date of the application. The Respondent's wife had lived in Ceylon with her children for one year and eight months at that date with the intention of staying there permanently, and during that time had no residence elsewhere; so she had been ordinarily resident in Ceylon. The children had been in Ceylon since March, 1948, and were minors dependent on the Respondent; so they had been ordinarily resident in Ceylon while dependent on him. It was not necessary (the learned judge held) that they should have been resident throughout their dependency, but only that they should have been dependent throughout their residence. The Appeal was therefore allowed. 10

12.—The Appellant submits that the interpretation placed by the learned judge on Section 6 (2) (ii) of the Act is wrong. The requirement regarding an applicant's wife is not that she "is ordinarily resident in Ceylon," but that she "has been ordinarily resident in Ceylon." The Appellant submits that the natural meaning of these words is that she has ordinarily resided in Ceylon before the application, not merely that she is so resident at the time thereof. Cases under taxing acts, dealing only with residence during a specifically defined period, provide little help in deciding what period is implied by "has been ordinarily resident" in this Act. In this case the Respondent and his wife had been married eleven years, the Respondent had been resident in Ceylon throughout that period, but she had been so resident for only twenty months. When as here the marriage has subsisted throughout the husband's necessary qualifying period, the Appellant submits that nothing in the Act justifies limiting the period during which the wife "has been ordinarily resident" to any less period. It is clear that the wife must have some period of residence herself as well as her husband's residence; and since the husband's residence must (under Section 3) have extended over at least ten years, it would be strange if twenty months were sufficient for the wife. 20 30

13.—As regards the children, the Appellant submits that the natural meaning of Section 6 (2) (ii) is that they must have been ordinarily resident in Ceylon throughout the period of their dependence on the applicant. At the time of this application the Respondent's children were aged eleven and three, and in the absence of evidence must be presumed to have been dependent on the Respondent throughout their lives. Yet they had resided in Ceylon only for twenty months. 40

14.—The Appellant therefore submits that the Decree of the Supreme Court of Ceylon is wrong and ought to be reversed for the following amongst other

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—**REASONS**

1. BECAUSE on the material before him the Appellant properly determined that the Respondent had not satisfied all the statutory conditions for registration as a citizen of Ceylon.
2. BECAUSE the Supreme Court misinterpreted Section 6 (2) (ii) of the Act.
- 10 3. BECAUSE the Supreme Court was not justified in overruling the Appellant's decision.

HARTLEY SHAWCROSS.  
FRANK GAHAN.

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CASE FOR THE APPELLANT

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