

In the Privy Council.

ON APPEAL
 FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

31157

BETWEEN

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

Appellant 1953

AND

MOHIDEEN ABDUL CADER BADURDEEN

Respondent. INSTITUTE OF ADVANCED STUDIES

10

Case for the Respondent.

RECORD.

1. This is an appeal from the judgment and decree of the Supreme Court of the Island of Ceylon (Basnayake, J.) dated the 18th May, 1951, allowing the Respondent's appeal under Section 15 of the Indian and Pakistani Residents Citizenship Act, No. 3 of 1949 (hereinafter referred to as "the Act") against an order by the Appellant under Section 14 (7) (b) dated the 7th July, 1950, of the Act refusing the Respondent's application under Section 4 (1) of the Act for the registration of himself, his wife and his two children as citizens of Ceylon. pp. 14-17.

2. The Act, the material provisions of which are annexed hereto, provides for the granting to Indian and Pakistani residents in Ceylon of the status of citizens of Ceylon by registration, upon the conditions and in the manner provided by the Act. The conditions for allowing any application for registration are laid down by Section 6. In particular Section 6 (2) (ii) requires the applicant to produce sufficient evidence to satisfy the Commissioner—

30 "where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2)), that his wife has been ordinarily resident in Ceylon, and in addition that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent."

The Appellant held that the requirements of this subsection were not satisfied unless—

(A) the wife of an applicant had been resident in Ceylon from the date of her marriage or from the 1st January, 1939, whichever was later, and

(B) each minor child had been resident from 1st January, 1939, or the date of birth whichever was later.

The issue for determination in this appeal is whether the Appellant was right in so holding or whether Basnayake, J., was right in holding that the requirements of the sections were satisfied if at the date of the application the wife and minor children had a settled abode in Ceylon with the intention of remaining there permanently and if also the minor children during their period of residence in Ceylon had been dependent on the applicant.

pp. 1-8.

3. On the 19th November, 1949, the Respondent applied in writing under Section 4 of the Act for the registration as a citizen of Ceylon of himself, his wife, Sayed Ibrahim Mohideen Fathima, his daughter Badurdeen Thahira Begum born on the 10th December, 1938, and his son Badurdeen Bashir Deen born on the 13th March, 1945. In the course of his application he stated that he was an Indian resident; that he had been continuously resident in Ceylon during the period of seven years commencing on 1st January, 1939, and ending on 31st December, 1945; and that he had been continuously resident in Ceylon from 1st January, 1946, until the date of this application. In the particulars attached to the said application, which he verified by affidavit, the Respondent set out the following places and periods of residence in Ceylon from 1st January, 1939, to the date of application with reference to himself, his wife and his minor children respectively :—

p. 3, 1. 1.

p. 7.

(A) *Respondent* : 357 Dam Street, Colombo—6 years, 1939 to 1945; 5 Old Moor Street, Colombo—2 years, 1945 to 1947; 57 Messenger Street, Colombo—1 year, 1947 to 1948; 191 Piachauds Lane, Maradana—1 year.

(B) *Respondent's Wife* : 104 Messenger Street, Colombo—3 months; 191 Piachauds Lane, Maradana—1 year, 5 months (1st July, 1948, to date).

(c) *Respondent's minor children* : 104 Messenger Street, Colombo—3 months.

p. 8.

4. On the 6th February, 1950, the Appellant caused to be served on the Respondent a notice under Section 9 (1) of the Act that he had decided to refuse his application unless he showed cause to the contrary within a period of three months from the said date by a letter addressed to the Appellant. The ground of refusal was stated as follows :—

“ That your wife and minor children have not been ordinarily resident in Ceylon.”

p. 9.

5. On the 2nd May, 1950, the Respondent's proctor addressed a letter to the Appellant stating that the Respondent had cause to show against his refusal and requesting him to have the matter fixed for inquiry. In the schedule setting out cause he stated that the Respondent's wife and minor children were entitled to simultaneous registration under Section 4 (2) (a) of the Act as the Respondent possessed the special residential qualifications under Section 3 of the Act.

p. 10.

6. The Appellant held an inquiry on the 26th June, 1950. The Respondent deposed (*inter alia*) that he married in 1938; that his wife and children used to pay visits to Ceylon but did not come to Ceylon to settle,

owing to housing difficulties, before 1948 ; that he secured a house on rent in July, 1948 ; that from March, 1948, his wife and children had lived at his cousin's premises in Messenger Street ; and that it was his intention and theirs to remain permanently in Ceylon. In answer to the Appellant he deposed that in the period 1938-42 it was not the housing difficulty that prevented his wife from coming over to Ceylon but that in the years immediately following marriage his wife and her parents desired that she should stay in India for some time.

7. On the 7th July, 1950, the Appellant made an order under p. 11.
10 Section 13 (7) of the Act refusing the application on the grounds set out in paragraph 2 hereof.

8. On the 6th October, 1950, the Respondent filed a petition of appeal pp. 12-13.
to the Supreme Court pursuant to Section 15 (1) of the Act. The grounds of appeal included the following :—

20 “ The applicant married in the year 1938 in India. The uncontradicted evidence of the applicant is that his wife visited him in Colombo from time to time during the period 1938 to 1948 and resided with him during such visits. The applicant further stated that his wife could not stay with him continuously in Ceylon during the period 1938 to 1948 (i) owing to the request of his parents-in-law and the custom prevailing amongst the petitioner's community that the wife should stay with the parents-in-law for some time after marriage, and (ii) owing to his inability to find suitable accommodation here and further that he took a house on rent in July 1948, and that his wife has been residing with him continuously from the year 1948 onwards.”

9. In the Supreme Court Basnayake, J., held that the Commissioner's p. 15, l. 18.
interpretation of Section 6 (2) (ii) was supported neither by the Act nor by the canons of construction of statutes. He referred to the observations of
30 Viscount Cave in *Levene v. Commissioners of Inland Revenue* [1928] A.C. 217 at page 225 as to the meaning of the expression “ ordinary residence ” and to those of Lord Sumner in *Inland Revenue Commissioner v. Lysaght* [1928] A.C. 234 at page 249 as to the meaning of “ ordinarily resident.” The learned judge then continued as follows :—

40 “ Since March, 1948, the applicant's wife has a settled abode p. 16, l. 24.
in Ceylon with her children. During that time she had no residence in any other country. There is no requirement in the section or elsewhere in the Act that the residence should have commenced at a given period of time or that it should have a minimum duration. It is clear from the Act that the date in relation to which this question of ordinary residence has to be decided is the date of the application, for no other date is indicated expressly or by necessary implication. At the date of his application, viz., 19th November, 1949, the applicant's wife had lived here with her children for one year and eight months with the intention of remaining in Ceylon permanently. That coupled with the fact that she had no other residence elsewhere clearly proves that she had been ordinarily resident in Ceylon at the relevant date.

“ Now, coming to the applicant’s children, the evidence is that they too have been here since March, 1948. The child of school-going age has been attending school here since September, 1948. I think in their case too it can be definitely said that they have been ordinarily resident here while dependent on the applicant. The section does not say that the period of residence here should be co-extensive with the period of dependence. The words are ‘ while being so dependent,’ not ‘ during the period of dependence.’ The words ‘ while being so dependent ’ connote a state and not a time. The eminent qualification is ‘ ordinarily resident.’ Considerations of time are involved in those words. Wife and minor children alike must satisfy the conditions of ‘ ordinary residence ’ at the date of the application. The children have to satisfy a further qualification, viz., that during their period of ordinary residence they were dependent on the applicant. 10

“ Gout’s case which the Commissioner regarded as inapplicable has in my opinion a bearing on the point and is of assistance as it holds that the question of ‘ ordinary residence ’ is one of fact and the motive with which residence is taken up is immaterial.”

p. 18. The learned judge therefore allowed the appeal as aforesaid. A decree 20 was passed accordingly.

p. 19. 10. On the 28th May, 1951, the Appellant applied to the Supreme
p. 21. Court for conditional leave to appeal to His Majesty in Council. Conditional
p. 23. leave was granted on the 8th June, 1951, and final leave on the 3rd July, 1951.

11. The Respondent respectfully submits that this appeal should be dismissed with costs for the following, amongst other

REASONS.

- (1) BECAUSE the words “ ordinarily resident ” in Section 6 (2) (ii) of the Act should be interpreted according to their ordinary meaning. 30
- (2) BECAUSE there are no words in the subsection or elsewhere in the Act imposing a requirement that the wife or minor children of an applicant should have been resident in Ceylon for a particular period of time.
- (3) BECAUSE the subsection only requires that the wife of an applicant should at the date of the application have been ordinarily resident in Ceylon and that each minor child dependent on the applicant should have been ordinarily resident in Ceylon while being so dependent. 40
- (4) BECAUSE the aforesaid requirements were satisfied in the present case.
- (5) BECAUSE the judgment of Basnayake, J., was right and should be upheld.

DINGLE FOOT.

ANNEXURE.

INDIAN AND PAKISTANI RESIDENTS (CITIZENSHIP) ACT, NO. 3 OF 1949.

* * * * *

2. Notwithstanding anything in any other law, an Indian or Pakistani resident to whom this Act applies may be granted the status of a citizen of Ceylon by registration, upon the conditions and in the manner prescribed by this Act. Acquisition of citizenship by registration under this Act.

3.—(1) This Act shall, subject to the provisions of section 4, apply solely to those Indian or Pakistani residents in Ceylon who are possessed of the special residential qualification, which in each case shall consist— Application of Act.

- 10 (a) in the first instance, of uninterrupted residence in Ceylon, immediately prior to the first day of January, 1946, for a period not less than the appropriate minimum period hereinafter specified ; and
- (b) secondly, of uninterrupted residence in Ceylon from the aforesaid day to the date of the application made in that case for registration under this Act.

(2) The appropriate minimum period of uninterrupted residence required by paragraph (a) of sub-section (1) shall—

- 20 (a) in the case of a person who is unmarried at the date of his application for registration, or in the case of a married person whose marriage has been dissolved by death or divorce prior to that date, be a period of ten years ; and
- (b) in the case of any married person (not being a married person referred to in paragraph (a) of this sub-section), be a period of seven years.

(3) For the purposes of this Act, the continuity of residence of an Indian or Pakistani in Ceylon shall, notwithstanding his occasional absence from Ceylon, be deemed to have been uninterrupted if, but only if, such absence did not on any one occasion exceed twelve months in duration.

30 4.—(1) Any Indian or Pakistani resident to whom this Act applies may, irrespective of age or sex, exercise the privilege of procuring registration as a citizen of Ceylon for himself or herself, and shall be entitled to make application therefor in the manner hereinafter prescribed : Scope of privilege conferred by this Act.

Provided that any such Indian or Pakistani resident, being either—

- (i) a married woman who is not living apart from her husband in accordance with a duly executed deed of separation or a decree of separation pronounced by a competent court, or
- (ii) a minor who is dependent on his father or on his widowed or unmarried mother,

40 shall not exercise the aforesaid privilege independently of the husband or of the father or the mother, as the case may be, or be entitled to make a separate application for registration.

(2) In the exercise of the aforesaid privilege—

- (a) a male Indian or Pakistani resident, if he is married, may procure, in addition to his own registration, the registration of his lawful wife (whether or not she is herself possessed of the special residential qualification) or of any legitimate minor child born to him of that or any previous marriage or any minor child borne by his wife prior to that marriage, who may be ordinarily resident in Ceylon and dependent on him; and
- (b) a female Indian or Pakistani resident to whom the proviso to sub-section (1) does not apply, if she is herself possessed of the special residential qualification, may procure in addition to her own registration, the registration of any minor child of hers who may be ordinarily resident in Ceylon and dependent on her. 10

(3) Where any Indian or Pakistani resident has died after acquiring the qualification specified in paragraph (a) of section 3 (1) and while continuing to have uninterrupted residence in Ceylon as defined in section 3 (3) from the first day of January, 1946, until the date of his death, the privilege that such Indian or Pakistani resident might, if alive, have exercised under this Act, shall be extended to each person whose registration such Indian or Pakistani resident could have procured under sub-section (2), and may accordingly be exercised— 20

- (a) in any case where such Indian or Pakistani resident was a male, by his widow (notwithstanding that she may herself not be possessed of the special residential qualification) and by each legitimate minor child of his who is not dependent on the widow if at the time of his death the widow was not living apart from him in accordance with a duly executed deed of separation or decree of separation pronounced by a competent court or such child was ordinarily resident in Ceylon and dependent on him, and if such widow or child has continued to be resident in Ceylon after his death to the date of any application for registration that such widow or child may decide to make under this Act; and 30
- (b) in any case where such Indian or Pakistani resident was a female, by each minor child of hers, if such child was ordinarily resident in Ceylon and dependent on her at the time of her death and has continued to be resident in Ceylon after her death to the date of application as aforesaid.

The privilege extended to a widow or a minor by the preceding provisions of this sub-section is hereinafter referred to as “the extended privilege”. 40

(4) No application purporting to be made under this Act by any person, other than an Indian or Pakistani resident entitled to exercise the privilege or a widow or a minor entitled to exercise the extended privilege hereinbefore referred to, shall be entertained in any circumstances or on any ground whatsoever.

5. The privilege or extended privilege conferred by this Act shall be exercised in every case before the expiry of a period of two years reckoned from the appointed date ; and no application made after the expiry of that period shall be accepted or entertained, whatsoever the cause of the delay.

Time limit for
exercise of
privilege.

6. It shall be a condition for allowing any application for registration under this Act that the applicant shall have—

Condition of
allowing
applications.

- 10 (1) first proved that the applicant is an Indian or Pakistani resident and as such entitled by virtue of the provisions of sections 3 and 4 to exercise the privilege of procuring such registration, or that the applicant is the widow or orphaned minor child of an Indian or Pakistani resident and as such entitled by virtue of those provisions to exercise the extended privilege of procuring such registration ; and
- (2) in addition, except in the case of an applicant who is a minor orphan under fourteen years of age, produced sufficient evidence (whether as part of the application or at any subsequent inquiry ordered under this Act) to satisfy the Commissioner that the following requirements are fulfilled in the case of the applicant, namely—
- 20 (i) that the applicant is possessed of an assured income of a reasonable amount, or has some suitable business or employment or other lawful means of livelihood, to support the applicant and the applicant's dependants, if any ;
- (ii) where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2)), that his wife has been ordinarily resident in Ceylon, and in addition, that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent ;
- 30 (iii) that the applicant is free from any disability or incapacity which may render it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon ;
- (iv) that the applicant clearly understands that, in the event of being registered as a citizen of Ceylon—
- (a) the applicant will be deemed in law to have renounced all rights to the civil and political status the applicant has had, or would, but for such registration in Ceylon have had, under any law in force in the territory from which the applicant or the applicant's father or ancestor or husband, as the case may be, emigrated, and
- 40 (b) in all matters relating to or connected with status, personal rights and duties and property in Ceylon, the applicant will be subject to the laws of Ceylon.

7.—(1) Every application for registration under this Act shall—

Applications.

- (a) be in the prescribed form and contain all the relevant particulars, explanations, answers or other statements for which provision is made in that form ;

- (b) be supported by affidavits of the applicant as to the facts and particulars set out in the application ; and
- (c) be addressed, and be transmitted or delivered to the Commissioner.

Nothing in the preceding provisions of this sub-section shall be deemed to preclude an applicant from submitting, at any time before the disposal of the application, affidavits of other persons who have direct knowledge of any facts or particulars set out in the application or the names of any such persons or certified copies of any documents on which the applicant relies for proof of anything set out in the application.

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(2) (a) Where a male applicant, who has a wife not living apart from him in accordance with a duly executed deed of separation or a decree of separation pronounced by a competent court or any minor child or children of any lawful marriage of his or any child or children of his wife ordinarily resident in Ceylon and dependent on him, desires such wife or child or children to be registered simultaneously with himself, there may be included in the application an express request by him in that behalf.

(b) Where any such request is included in an application, there shall be set out in the application, in respect of the wife or each such child, as as the case may be, all the particulars for furnishing which in such 20 circumstance provision is made in the prescribed form of application.

(c) In the case of any wife or child in respect of whom a request under sub-section (2) has not been included in the application, the applicant may make the like request at any time before the final disposal of the application, by letter setting out the aforesaid particulars and addressed to the Commissioner.

(3) A widow (whether she is exercising the privilege, or is exercising the extended privilege, conferred by this Act), or a woman whose marriage has been dissolved by decree of a competent court, or a woman who is living apart from her husband in accordance with a duly executed deed 30 of separation or a decree of separation pronounced by a competent court, may include in her application or make by subsequent letter, as in the case provided for in sub-section (2) (c), a request for the registration of any minor child borne by her, ordinarily resident in Ceylon, and dependent on her.

(4) In the case of an orphaned minor making an application, whether in the exercise of the privilege or in the exercise of the extended privilege conferred by this Act—

- (a) where the minor is of or over the age of fourteen years, the application may be signed by the minor ; and 40
- (b) where the minor is under the age of fourteen years, the application shall be signed by the guardian or the person having the care and custody of the minor.

* * * * *

Administrative
arrangements.

18.—(1) For the purpose of inquiring into the applications of Indian or Pakistani residents for registration as citizens of Ceylon, registering such

of those residents as are found to be qualified and administering the provisions of this Act generally, there shall be appointed an officer to be known as the Commissioner for the Registration of Indian and Pakistani Residents.

(2) There may also be appointed—

- (a) a Deputy Commissioner for the whole Island or two or more Deputy Commissioners for specified areas of the Island ;
- (b) such number of investigating officers as the Minister may from time to time specify ; and
- (c) such other officers, clerks, stenographers, interpreters and servants as may be necessary to assist the Commissioner.

(3) In the performance of his duties and the exercise of his functions under this Act, the Commissioner shall be subject to the general direction and control of the Minister.

(4) In all matters for which no express provision is made in this Act, the Deputy Commissioner or each Deputy Commissioner, and each investigating officer, shall perform such duties and exercise such functions as may be assigned to him by the Commissioner with the general or special approval of the Minister.

(5) Every officer appointed for the purposes of this Act shall be deemed to be a public servant within the meaning of the Ceylon Penal Code.

* * * * *

21.—(1) The Minister may make all such regulations as may be necessary for prescribing—

- (i) the form of—
 - (a) applications for registration,
 - (b) certificates of registration,
 - (c) notices and notifications,
 - (d) the register of citizens required under this Act,
 - (e) the oaths to be taken for the purposes of this Act ;
- (ii) any matter of procedure incidental to the administration of this Act ; and
- (iii) any other matter which is authorised or required by this Act to be prescribed.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation upon such publication.

(3) Every regulation made by the Minister shall as soon as may be after it is made be laid before the Senate and the House of Representatives ; and if a resolution is passed by the Senate or the House of Representatives, within forty days of the regulation being so laid, that the regulation shall be annulled, the regulation shall with effect from the date of the resolution be void but without prejudice to anything previously done thereunder.

Every regulation which is not so annulled shall be as valid and effectual as though it were herein enacted.

Interpretation.

22. In this Act, unless the context otherwise requires—

“appointed date” means the date appointed by the Minister by Order under section 1 as the date on which this Act is to come into operation ;

“Commissioner” means the Commissioner for the Registration of Indian and Pakistani Residents referred to in section 18 ;

“Indian or Pakistani resident” means a person—

(a) whose origin was in any territory which, immediately prior 10 to the passing of the Indian Independence Act, 1947, of the Parliament of the United Kingdom, formed part of British India or any Indian State, and

(b) who has emigrated therefrom and permanently settled in Ceylon,

and includes a descendant of any such person ;

“the special residential qualification” means the qualification of uninterrupted residence in Ceylon required by section 3.

In the Privy Council.

ON APPEAL

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of Ceylon.*

BETWEEN

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for the Registration of Indian and
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BADURDEEN Respondent.

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