

1968, 20

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O N A P P E A L  
FROM THE SUPREME COURT OF CEYLON

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B E T W E E N: MARIKKAR THAMBY KADER  
SAHIB SEYED AHAMED NAINA  
MOHAMED SAHIB  
(applicant-Appellant) Appellant

- and -

THE COMMISSIONER FOR THE  
REGISTRATION OF INDIAN AND  
PAKISTANI RESIDENTS, COLOMBO  
Respondent

UNIVERSITY OF LONDON  
INSTITUTE OF FINANCE  
10 LEICESTER SQUARE  
16 JAN 1969  
25 LEICESTER SQUARE  
LONDON W.C.1.

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C A S E FOR RESPONDENT

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RECORD

20 1. This is an Appeal by Special Leave from the Judgment and Order of the Supreme Court of Ceylon (Tambiah J.) dated the 10th day of October 1962 whereby the said Supreme Court dismissed the Appellant's appeal from the Order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents (D.T. de S. Gunewardena, Esquire) dated the 15th day of September 1958 refusing the Appellant's application to be registered as a citizen of Ceylon, under the provisions of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (as amended).

pp. 92-8,  
99-100

pp. 79-84

2. The principal issues that arise in this Appeal are:

30 (a) whether the Appellant's application to be registered as a citizen of Ceylon under the provisions of the

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said Act was out of time.

- (b) whether the Supreme Court of Ceylon was entitled to find that the Appellant's said application was out of time and rightly so found.

3. The Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949, as amended by No. 37 of 1950 and No. 45 of 1952, provides that an Indian or Pakistani resident, as therein defined, may apply in a prescribed manner to be registered as a citizen of Ceylon, and upon such application and upon proof that he possesses certain residential and other qualifications may be granted that status.

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The application is made to the Commissioner for the Registration of Indian and Pakistani Residents (or a deputy Commissioner) who refers it to an investigating officer for verification of the particulars and a report, and who may in certain circumstances hold an enquiry.

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Section 4 of the Act provides that a married woman living with her husband may not make a separate application for registration but that her husband may procure her registration in addition to his own. Likewise a minor who is dependent on a parent may not apply for himself but the parent upon whom he is dependent may apply on his behalf. Subject to these two exceptions, any Indian or Pakistani resident to whom the Act applies, may apply for registration "irrespective of age or sex" and each applicant applies "for himself or herself".

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4. Section 5 of the Act provides as follows:-

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.

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Section 24 of the Act provides as follows:

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In this Act, unless the context otherwise requires,

"Appointed date" means the 5th day of August 1949.

5. The Appellant made an application for registration as a citizen of Ceylon in the form prescribed by regulations made under the Act. This was Application No. 9933 dated the 4th December 1956 and was the only form of application which was adjudicated upon by the Deputy Commissioner or the Supreme Court. pp.1-9
6. On the 5th August 1957 the Deputy Commissioner gave the Appellant notice under section 9(1) of the Act that he had "decided to refuse your application under that Act dated 4th December 1956 on the grounds specified in the Schedule hereto unless you show cause to the contrary within a period of three months". pp.33-4
- 20 The Appellant replied on the 2nd November 1957, showing cause and asking the Deputy Commissioner to "fix my application for an inquiry under section 9(3) (a) of the Act". p.48
7. An enquiry was accordingly held, the evidence of the Appellant and of other witnesses being taken on the 19th February 1958 and the 29th August 1958. pp.56-65  
pp.72-74
- 30 On the 15th September 1958 the Deputy Commissioner made an Order refusing the Appellant's application on the grounds that he had failed to prove continuous residence in Ceylon for a part of the requisite qualifying period viz. from 1936 to 1943, and that he had failed to prove that he had permanently settled in Ceylon. pp.79-84
- 40 8. Part of the evidence relied upon by the Appellant to prove his residence in Ceylon from 1936 to 1943 was a school certificate (referred to as a "Q Schedule") issued by the Head Teacher of the K/Bopitiya Estate Tamil Mixed School. Prior to and during the enquiry, the genuiness of this document was investigated p.11  
pp.32,35-40,  
46,49-52,68.

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p.82, l. 39  
pp.35-38,  
47,51-52,  
55-56 66-71

by the office of the Deputy Commissioner and, at his instance by another Government Department, from whom reports were received, and in the result the Deputy Commissioner found that the document was not genuine. Similar investigations were made at the same time in the case of an application for registration by a brother of the Appellant, Seyed Mohamed Shareef, whose application was supported by a similar school certificate issued by the same Head Teacher at the same time and was also dealt with by this Deputy Commissioner. The same counsel who appeared for Seyed Mohamed Shareef appeared for the Appellant, and a part of the evidence and proceedings in Seyed Mohamed Shareef's case (dealing with the issue of the school certificates) was incorporated into and consolidated with the proceedings in the Appellant's application. The procedure adopted in both cases was substantially the same.

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pp.41-45,47,  
51-52,55-56,  
66-72,76-78

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The application of Seyed Mohamed Shareef was refused and his appeal to the Supreme Court of Ceylon dismissed. Subsequently however, upon appeal to the Privy Council, it was held (1966 A.C. 47) that the Deputy Commissioner, in adopting the procedure which he did, had not complied with the principles of natural justice, and accordingly the orders of the Supreme Court and of the Deputy Commissioner were quashed and the case remitted to the Supreme Court for the purpose of placing the application for registration de novo before the Commissioner.

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It is not contended by the Respondent that there was any significant difference in the procedures adopted by the Deputy Commissioner in the determination of the applications of the Appellant and of Seyed Mohamed Shareef and he concedes and submits that if the issues referred to in paragraph 2 hereof are decided adversely to him, the case should be remitted to the Supreme Court for the purpose of a rehearing de novo of the Appellant's application.

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pp.86-89

9. By Petition of Appeal dated the 3rd December 1958 the Appellant appealed from the Order of the Deputy Commissioner refusing his application, to the Supreme Court of Ceylon.

10. Upon the hearing of the appeal it was submitted by counsel for the Respondent that the Appellant had not made his application within the time prescribed by law and that therefore the Deputy Commissioner should not have entertained the application nor should the Supreme Court entertain it.

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p.92, 1.27

10 On the 10th October 1962 the Supreme Court (Tambiah J.) delivered judgment, accepting this submission and dismissing the Appeal.

pp.92-98

20 In the course of his judgment the learned Judge rejected as untenable a contention of the Appellant's counsel that the application which was inquired into by the Deputy Commissioner was not the application of the 4th December 1956, signed by him, but was an earlier application made through a brother of his, one Mohamed Hussain Abdul Cader. This brother had applied by an application in the prescribed form dated the 4th August 1951, to be registered as a citizen of Ceylon under the Act. The learned Judge held, it is submitted correctly, that this brother had not made any application on behalf of the Appellant. The Appellant's name appeared on this form of application only where the applicant was required to state the names, addresses and relationship of all dependants, and nowhere on the form did the applicant purport to be making any application on behalf of the Appellant. The learned Judge held, rightly it is submitted on the Appellant's own evidence, that the Appellant was not a minor at the time that this earlier application was made by the brother. Whether or not he was a minor at that time, the Respondent submits that there was no evidence that the brother was making any application on the Appellant's behalf, but that on the contrary it plainly appeared that he was not, and that in any event he would have had no power or entitlement under the Act so to do.

p.93 1.16-  
p.94 1.28

p.93 1.23

p.94 1.38  
- p.95 1.4  
p.56 11.19-20

40 11. The learned Judge referred also to a note, upon which the Appellant relied, which purported to have been made by someone in the Commissioner's Office, apparently on the 28th or 29th November 1956. This read:

p.96, 11.3-36

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p.99,1.6

"Get dependent brother fill  
in Form 1A".

The learned Judge rejected a submission for the Appellant that this note was an invitation by the Commissioner or on his behalf, requesting the Appellant to regularise an application made on his behalf by his brother, by filling in the proper form, holding, rightly as it is submitted, that in view of the imperative provisions of the Act, no officer can authorise a person to apply for registration under the Act two years after the prescribed date and that even if any application had been received, it should not be entertained.

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pp.101-102

12. On the 24th March 1965 the Appellant was granted Special Leave to Appeal to Her Majesty in Council.

13. The Respondent respectfully submits that this Appeal should be dismissed and the said Judgment and Order of the Supreme Court of Ceylon dated the 10th day of October 1962 dismissing the Appeal of the Appellant from the Order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents dated the 15th day of September 1958 refusing the application of the Appellant to be registered as a citizen of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (as amended) should be affirmed, and the Appellant should be ordered to pay the costs of this Appeal, for the following amongst other

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## R E A S O N S

1. BECAUSE the Appellant's application to be registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 was out of time.
2. BECAUSE the only application for registration as a citizen of Ceylon which was adjudicated upon in this

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case by the tribunals below was out of time.

3. BECAUSE if, as it is submitted was not the case, any application for registration as a citizen of Ceylon was ever made by the Appellant or on his behalf within the prescribed time, such application was never made in the prescribed form or manner and was not, and never became, valid or effectual in law.
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4. BECAUSE in the circumstances of the case it was necessary for the Appellant to make application for registration "for himself" and no person could validly apply on his behalf.
5. BECAUSE if any application for registration could have been validly made on the Appellant's behalf, no application was made by any person who was entitled under the Act so to apply.
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6. BECAUSE no invitation or request to the Appellant to apply or fill in a form of application for registration after the expiry of 2 years from the appointed date, could validate an invalid or out of time application or have any effect whatsoever in view of the express provisions of the Act.
7. BECAUSE in view of the mandatory provisions of the Act the Appellant's application for registration could not be entertained by the Deputy Commissioner or the Supreme Court, nor can estoppel be pleaded where the result of giving effect to it would be something prohibited by the law.
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8. BECAUSE neither the Deputy Commissioner nor the Supreme Court had jurisdiction to order that the Appellant be registered as a citizen of Ceylon.
9. BECAUSE the judgment of the Supreme Court of Ceylon was right for the reasons therein stated.

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Montague Solomon.

IN THE PRIVY COUNCIL

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FROM THE SUPREME COURT OF CEYLON

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B E T W E E N:

MARIKKAR THAMBY KADER  
SAHIB SEYED AHAMED NAINA  
MOHAMED SAHIB

(Applicant-Appellant)

Appellant

- and -

THE COMMISSIONER FOR THE  
REGISTRATION OF INDIAN  
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Respondent

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C A S E FOR RESPONDENT

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LONDON, E.C.3.