

16 JAN 1969

25 R. SQUARE  
LONDON W.C.1.

20, 1968

1.

No. 9 of 1966

IN THE PRIVY COUNCIL

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

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B E T W E E N:

MARIKKAR THAMBY KADER SAHIB  
SEYED AHAMED NAINA MOHAMED SAHIB      Appellant

- and -

10      THE COMMISSIONER FOR THE REGISTRA-  
TION OF INDIAN AND PAKISTANI  
RESIDENTS, COLOMBO      Respondent

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C A S E      F O R      T H E      A P P E L L A N T

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1. This is an appeal by Special Leave of Her Majesty in Council granted on the 24th March 1965, from an order of the Supreme Court of Ceylon dated the 10th October 1962, whereby the Supreme Court dismissed the Appellant's appeal from the order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents (hereinafter called the "Deputy Commissioner") dated the 15th September, 1958, refusing the appellant's application for registration as a citizen of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (hereinafter called "the Act").
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2. The Appellant made an application for registration as a citizen of Ceylon under Section 4(1) of the Act. By a notice under Section 9(1) of the Act dated the 5th August
- RECORD  
p.101-102  
pp.99-100  
pp.79-84  
  
pp.33-34

RECORD

1957 the Deputy Commissioner informed the Appellant that he had decided to refuse the said application, unless the appellant showed cause to the contrary within three months, on the grounds that the appellant had failed to prove:-

- (1) that he was an Indian or Pakistani resident and that no evidence had been offered that his origin or the origin of an ancestor of his was in prepartition British India or an Indian state; 10
- (2) that he was resident in Ceylon from 1st January 1936 to 6th August 1951 without absence exceeding twelve months on any single occasion;
- (3) that he was on the date of his application possessed of an assured income of a reasonable amount or had some suitable business or employment or other lawful means of livelihood to support himself; 20
- (4) that he had permanently settled in Ceylon.

pp.41-79

pp.79-84

3. The appellant having shown cause under the Act, an inquiry was held by the Deputy Commissioner on 21st September 1957, 19th February 1958 and 29th August 1958 and after recording the evidence of the appellant and his witnesses the Deputy Commissioner made an Order dated the 15th September 1958 refusing the application on the ground that the Appellant had failed to prove that:- 30

- (a) He was resident in Ceylon from 1st January, 1936 to 31st December, 1943 without absence exceeding twelve months on any single occasion, and
- (b) He had permanently settled in Ceylon. 40

The Deputy Commissioner held that the appellant had not permanently settled in

Ceylon on the basis of his finding that the appellant was not resident in Ceylon from 1936 to 1943.

10 4. The investigations into the appellant's application was combined and consolidated with the investigations into his brother's (Seyed Mohamed Shareef) application because both the appellant and his brother had submitted Q  
schedules issued by the same school as  
evidence of their residence in Ceylon from  
1936 to 1943. For the same reason a part  
of the inquiry-proceedings of his brother's  
application was incorporated into and con-  
solidated with the inquiry-proceedings of  
the appellant's application. The inquiry  
into the two applications was held separately  
but by the same Deputy Commissioner. In both  
applications, the Deputy Commissioner adopted  
the same procedure for enquiring into the  
20 genuineness of the Q schedules and gave the  
same reasons for holding that they were not  
genuine.

pp.35-40

30 5. The appellant's brother, Shareef, appealed to the Supreme Court of Ceylon against the Deputy Commissioner's order dated the 15th September 1958 refusing his said application. By a judgment and decree dated the 6th December 1960 the Supreme Court dismissed the appeal. By special leave granted on 26th February 1962 the brother appealed to Her Majesty in Council and on the ground that the Deputy Commissioner had failed to comply with the principles of natural justice, for reasons given on 30th June 1965 the appeal was allowed, the order of the Deputy Commissioner dated 15th September 1958 was quashed and the case remitted to the Supreme Court for the purpose of placing de novo the brother's application for  
40 registration before the Commissioner for Registration of Indian and Pakistani Residents. (This case is reported in 1966 Appeal Cases at page 47). Thereafter, the Application of this brother, Shareef, was inquired into by the said Commissioner and Shareef was registered as a Citizen of Ceylon on 12th November 1967.

RECORD

pp.86-89

6. The appellant appealed to the Supreme Court on substantially the same grounds as his brother Shareef but at the hearing of the appeal the Respondent took up the objection that the appellant had not made the application within the time prescribed by Section 5 of the Act and that therefore the Deputy Commissioner should not have entertained the application nor should it be entertained by the Supreme Court. Section 5 of the Act provides:-

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"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, whatever the cause of the delay".

Section 24 of the Act provides that the appointed day is the 5th August 1949.

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pp.1-5

7. On the record there was an application on a Form 1A signed by the appellant dated the 4th December 1956 and regarding this as the application for registration as a citizen for the purposes of Section 5 of the Act the Supreme Court (Tambiah J.) upheld the Respondent's objection and therefore by order dated 10th October 1962 dismissed the Appellant's appeal.

pp.99-100

8. Tambiah J. in his judgment accepted that the Deputy Commissioner had misdirected himself on a number of matters. He said:-

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p.97 1.48  
- p.98, 1.6

"On the facts, no doubt, a good deal could be said on behalf of the Appellant. The Commissioner has misdirected himself on a number of matters, but it is unnecessary for me to go into the facts in view of my finding that the Appellant had not made an application within the prescribed time".

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p.101-102

9. Special leave to appeal to Her Majesty

in Council was granted by Order in Council dated the 24th March 1965.

10. The Appellant respectfully submits that this appeal should be allowed, that the order of the Supreme Court dated 10th October 1962 should be set aside, that the order of the Deputy Commissioner dated 15th September 1958 should be quashed and the Respondent directed to cause the Appellant to be registered as a citizen of Ceylon, or the case remitted to the Supreme Court for the purpose of placing de novo the appellant's application for registration before the Commissioner for Registration of Indian and Pakistani Residents (Citizenship) Act 1949 and for the appropriate orders as to costs for the following among other

R E A S O N S

1. BECAUSE there was no evidence in the record of the inquiry before the Deputy Commissioner that the application in Form 1A dated the 4th December 1956 was the appellant's first application.
2. BECAUSE there being no objection relating to prescription in time taken at the inquiry before the Deputy Commissioner, there is a presumption that the said application of the 4th December 1956 was not the appellant's first application and that his first application was made in time.
3. BECAUSE the presumption of regularity applies.
4. BECAUSE the Supreme Court was wrong in entertaining on appeal a matter which was not raised before the Deputy Commissioner.
5. BECAUSE the Deputy Commissioner had failed to comply with the principles of natural justice.

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E.F.N. Gratiaen  
Thomas O. Kellock

