[IN THE PRIVY COUNCIL]

1962 *Present :* **Lord Radcliffe, Lord Keith of Avonholm, Lord Hodson, Lord Devlin and Mr. L. M. D. de Silva**

N. K. K. SHANMUGAM, Appellant, *and* THE COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

Privy Council Appeal No. 62 of 1960

Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949, as amended by Act No. 45 of 1952—Sections 6(2) (ii) and 22—Application for registration as a citizen of Ceylon—Requirement of residence in Ceylon of wife of applicant within the first anniversary of the date of marriage—Effect of her non-residence because of war conditions between 1st December 1941 and 31st December 1945—Proof of permanent settlement—Quantum of evidence of change of Indian domicile—Section 5 of Act No. 45 of 1952—Retrospective effect, on pending proceedings, of amendments introduced by Act No. 45 of 1952—Interpretation Ordinance (Cap. 2)—Section 6(3) (c)—Meaning of the words " express provision ".

(i) The appellant, who made application to be registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship Act), was married in India on the 16th March, 1944. The wife did not arrive in Ceylon till October, 1945.

Held, that the failure of the wife to commence residence in Ceylon within the first anniversary of the date of the marriage, as required by section 6 (2) (ii) of the statute, disentitled the appellant to citizenship. Although the wife remained in India because of the war conditions prevailing at that time, such non-residence in Ceylon could not be construed as interruption of residence within the meaning of section 6 (as amended).

Fakrudeen v. Commissioner for Registration of Indian and Pakistani Residents (1955) 57 N.L.R. 111, overruled.

Obiter : In considering whether a person had acquired a permanent settlement in Ceylon prior to his application to be registered as a citizen of Ceylon the tribunal of enquiry would have to investigate and assess virtually the same facts as those normally regarded as relevant in considering a question of change of domicile. The respective fields of enquiry necessarily contain the same sorts of facts. The decision of *Tennekoon v. Duraisamy* (59 N.L.R. 481), however, emphasises that, though facts have to be proved by the applicant justifying a finding that there was a permanent settlement, it is not required that they should be subjected to the same very strict tests as English law has applied to any claim of a changed domicile as, for instance, that strong presumption in favour of the retention of the domicile of origin which has not infrequently been attributed to English decisions on this subject.

(ii) Section 6 (3) (c) of the Interpretation Ordinance reads as follows :—

" Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or deemed to have affected—

(c) any action, proceeding or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding or thing may be carried on and completed as if there had been no such repeal."

Held: To be "express provision" with regard to something it is not necessary that that thing should be specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom.

Accordingly, the retrospective effect given by section 5 (1) of the Indian and Pakistani Residents (Citizenship) Amendment Act No. 45 of 1952 to the amendments effected by the preceding sections of that Act is applicable to the present application which was pending at the time when the Act was passed, although pending proceedings were not specially mentioned in the Act.

APPEAL from a judgment of the Supreme Court.

E. F. N. Gratiaen, Q.C., with *Walter Jayawardena*, for the applicant-appellant.

Dingle Foot, Q.C., with *M. P. Solomon*, for the respondent.

Cur. adv. vult.

May 7, 1962. [*Delivered by* LORD RADCLIFFE]—

This is an appeal from a judgment dated the 8th day of August, 1958, of the Supreme Court of Ceylon dismissing an appeal from an order of the Commissioner for the Registration of Indian and Pakistani Residents (respondent to this appeal) dated the 23rd day of May, 1957, by which he had refused an application by the appellant to be registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

The Act came into force on the 5th August, 1949. It makes provision for granting the status of a citizen of Ceylon to Indian and Pakistani residents in Ceylon who are possessed of the residential qualifications specified in the Act if they satisfy certain conditions set out in it. These residential qualifications and the conditions just mentioned are discussed in the judgment of the Board in the case of *Tennekoon v. Duraisamy*[1]. Their Lordships do not think it necessary to repeat here all that was said in that case.

In section 22 of the Act Indian or Pakistani resident is defined thus :

" 'Indian or Pakistani resident' means a person—

(*a*) whose origin was in any territory which, immediately prior 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 ; "

[1] *59 N.L.R. 481 also (1958) A. C. 354.*

In section 6 as amended by Act No. 45 of 1952 the following among other conditions that have to be satisfied appears :

" 6 (2) (ii) that his wife was uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of her marriage and until the date of the application, and in addition, that each minor child dependent on the applicant was uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of the child's birth and until the date of the application ; "

The application was refused by the Commissioner on the grounds that (*a*) the applicant's wife had not resided in Ceylon as required by section 6 (2) (ii) and (*b*) that the applicant had not satisfied him that he was " permanently settled " in Ceylon as required by section 22. As will be seen from the section permanent settlement by a person in Ceylon is necessary before he can claim to be an " Indian or Pakistani resident ". On appeal the Supreme Court affirmed the order of the Commissioner without giving reasons.

The applicant was married in India on the 16th March, 1944. The wife did not arrive in Ceylon till October, 1945, later than " the first anniversary of the date of her marriage ". Section 6 as amended contains the following provision :

" For the purposes of the preceding paragraph (2) (ii), (above) the continuity of residence of the wife or a minor child of an applicant shall not be deemed to have been interrupted by reason that she or he was not resident in Ceylon during the period commencing on December 1, 1941, and ending on December 31, 1945, or during any part of that period, if the Commissioner is satisfied that she or he did not reside in Ceylon during that period or part thereof owing to special difficulties caused by the existence of a state of war. "

It was argued before the Commissioner and before their Lordships that the wife did not arrive in Ceylon till October, 1945, owing to reasons covered by the last words of the passage set out above and that for this reason the Act excused her absence from Ceylon till October, 1945, although she had never resided previously in Ceylon.

In the case of *Fakrudeen v. The Commissioner for Registration of Indian and Pakistani Residents* [1] this view of the law was taken by the Supreme Court. The Commissioner rejected this argument saying amongst other things " it cannot be said that continuity of residence has been interrupted if a person has never been resident in this country ". His order as already stated was affirmed by the Supreme Court in this case. Their Lordships are of the opinion that the Commissioner was right. In

[1] *57 N.L.R. 111.*

Fakrudeen's case the Supreme Court commenting on the words of the Act relied on by the appellant said:

> "The legislature here has in mind not occasional absence or mere interruptions of a period of residence, but non-residence during the war period, an expression which can fairly include any failure to reside attributable to war conditions, whether or not the period of non-residence constituted an interruption of a period of residence."

With all respect to the Supreme Court their Lordships think that such a view strains language beyond permissible limits.

The Commissioner also held that even if the argument mentioned above be accepted he was not satisfied that during the period in question the applicant's wife remained in India because of war conditions. He gave two reasons for this view, firstly that it was a belated piece of evidence given in May, 1957, of a state of things which had never been mentioned before. In this he was wrong because the record shows that on the 25th September, 1953, the applicant had said to an investigating officer that the delay in bringing the wife over was "due to special circumstances created by the war". The second reason was that in his application he had stated that during 1944 and 1945 his wife had resided at No. 9 Puppurasa Bazaar. Confronted with this statement the applicant said "That entry is a mistake—my wife never lived at Puppurasa". It is difficult to see how a positive statement such as that made by the applicant could be an inadvertent mistake. The Commissioner appears to think it was a false statement which the applicant had forgotten having made. There appears to be substance in the Commissioner's second reason but as on the point in question the Commissioner had made an error of fact (in his view that certain evidence was belated) their Lordships prefer not to place reliance on his finding. It is not necessary to do so for the reason, expressed earlier, that the applicant's wife did not satisfy the provisions of section 6 (2) (ii). Upon this view alone the application would fail.

There arises, however, a question whether the Act of 1952 affects the appellant's application. The application was made in July, 1951, and the provision set out above relating to the residence of the wife was made by Act 45 of 1952 which also contains provision in section 5 making it retrospective to the following effect:

> "(1) The amendments effected by the preceding sections of this Act shall be deemed to have come into force on the date appointed under section 1 of the principal Act; and accordingly, but subject to the provisions of sub-section (3) of this section, the principal Act shall be deemed on and after that date to have had effect, and shall have effect, in like manner as though it had on that date been amended in the manner provided by this Act."

It has been argued that the provision regarding the residence of the wife is inapplicable to this case. It has been said that the application was pending when Act 45 of 1952 was passed and that by reason of the

provisions of section 6 (3) of the Interpretation Ordinance (Chapter 2 Legislative Enactments of Ceylon) the Act is not applicable. Section 6 (3) is to the following effect :

> " Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected—
>
> (c) any action, proceeding, or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal. "

Sub-sections (*a*) and (*b*) have no bearing on this case.

It is argued that the Act does not contain the " express provision " required by the Interpretation Ordinance to make it applicable. Their Lordships do not agree. Upon the meaning of the words " express provision " Counsel relied upon the case of *In re Meredith* [1] and stated that it must be provision the applicability of which did not arise by inference. He argued that there was no "express provision " as no reference had been made to pending proceedings. Their Lordships are of the view that it is correct to state that express provision is provision the applicability of which does not arise by inference. The applicability however of the provision under discussion to the present case does not arise by inference ; it arises directly from the language used. The fact that the language used is wide and comprehensive and covers many points other than the one immediately under discussion does not make it possible to say that its application can arise by inference only. To be " express provision " with regard to something it is not necessary that that thing should be specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom. The argument fails.

In the circumstances their Lordships do not find it necessary to give any decision upon the other ground of appeal that was argued before them, viz., that the Commissioner had erred in law in his finding that the applicant was not permanently settled in Ceylon at the date of application. It was said that his error consisted in introducing a reference to " change of domicile " into his stated reasons for holding that there was no permanent settlement.

Their Lordships think however that it may be helpful for the future if they make one observation about the decision of the Board in *Tennekoon v. Duraisamy* [2], which was much relied upon in argument before them. In their opinion it would be a misunderstanding to suppose that in considering whether a person had acquired a permanent settlement in Ceylon prior to application the tribunal of enquiry would not

[1] *[1898] 67 L.J. 409.*

[2] *[1958] A. C. 354.*

have to investigate and assess virtually the same facts as those normally regarded as relevant in considering a question of change of domicile. The respective fields of enquiry necessarily contain the same sorts of facts. The importance of the decision of *Tennekoon v. Duraisamy* (supra) is that it emphasises that, though facts have to be proved by the applicant justifying a finding that there was a permanent settlement, it is not required that they should be subjected to the same very strict tests as English law has applied to any claim of a changed domicile as, for instance, that strong presumption in favour of the retention of the domicile of origin which has not infrequently been attributed to English decisions on this subject.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of this appeal.

Appeal dismissed.