

1965 Present : T. S. Fernando, J., G. P. A. Silva, J.,
and Alles, J.

M. M. A. PASANGNA, Appellant, and THE REGISTRAR-
GENERAL and another, Respondents

S. C. 47/1963—D. O. (Criminal) Matale, 868/X

Registration of births—Son born to an Indian Tamil resident registered as a citizen of Ceylon—Registration of his birth in Register of Births—Should the “race” of the parents be described as “Indian Tamil” or as “Ceylon Tamil” ?—Meaning of term “race”—Distinction between “race” and “citizenship”—Indian and Pakistani Residents (Citizenship) Act (Cap. 350), ss. 6 (2) (iv) (a), 18—Births and Deaths Registration Act (Cap. 110), ss. 10 (1), 28 (1) (b)—Citizenship Act, s. 13.

Interpretation of statutes—Importance of a Schedule appended to an Act—Effect of preamble.

An Indian Tamil resident registered as a citizen of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act is by race an Indian Tamil, and not a Ceylon Tamil, in the contemplation of the term “race” in cages (4) and (5) of Form A in the Schedule, read with section 10, of the Births and Deaths Registration Act.

Further, quite apart from the special meaning given to “Indian Tamils” as being a race in the Births and Deaths Registration Act, it would not be inappropriate nor without justification to call the Indian Tamils a race. Therefore, the conferment of Ceylon citizenship on an Indian Tamil, although it changes his nationality and citizenship, does not have the effect of changing his race. The accent in section 6 (2) (iv) (a) of the Indian and Pakistani Residents (Citizenship) Act is, as is made clear by the preamble to the statute, on the words “civil and political status”, which is a necessary attribute of citizenship and not an attribute of race.

A son born to a person registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act does not suffer any prejudice, in respect of his rights under that Act, from the mere fact that, in the Birth Register, the race of his father or mother is described as “Indian Tamil”.

A provision in a Schedule referred to in a section of a Statute is as important as a provision in the Statute itself and would cease to prevail only in the event of repugnance to a provision in the main Statute itself.

The preamble of a Statute may legitimately be consulted when interpreting any section of the Act whose meaning is not clear.

APPEAL from a judgment of the District Court, Matale. On account of a difference of opinion between the two Judges before whom this appeal first came up for argument it was listed before a Bench of three Judges in terms of section 38 of the Courts Ordinance.

The petitioner-appellant, his wife and their four children had been registered on 18th March 1954 as Citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act. In the present application

made under the provisions of section 28 (1) (b) of the Births and Deaths Registration Act the petitioner sought to have the birth registration particulars of his son born on 30th September 1960 altered as to the father's race and the mother's race from "Indian Tamil" to "Ceylon Tamil" in cages (4) and (5) of the Register of Births. It was contended on behalf of the appellant that, by virtue of the provisions of section 18 of the Indian and Pakistani Residents (Citizenship) Act, a person who is registered as a citizen under the Act became entitled to the same rights and subject to the same liabilities as any other citizen of Ceylon and also that, by reason of such registration, the appellant and his wife were Ceylon Tamils on the day of the birth of the son whose registration was in question.

M. Tiruchelvam, Q.C., with T. Somasunderam and Mark Fernando, for Petitioner-Appellant.

R. Hector Deheragoda, Senior Crown Counsel, with N. B. de S. Wijesekera, Crown Counsel, for Respondents-Respondents.

Our. adv. vult.

February 12, 1965. G. P. A. SILVA, J.—

The petitioner-appellant made an application to the District Court of Matale to have certain particulars of entries made by the Registrar of Births, Matale, in respect of the registration of the birth of his son born on 30.9.1960, altered in terms of section 28 (1) (b) of the Births and Deaths Registration Act (Chapter 110 of the Legislative Enactments of Ceylon). The said particulars, so far as they are relevant to the present appeal, consisted of the alteration of the particulars as to the father's race and the mother's race from "Indian Tamil" to "Citizen of Ceylon Tamil" in cages (4) and (5) of the Register of Births.

The evidence of the petitioner before the District Court was that he, his wife and their four children were, on 18.3.1954, registered as Citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act (Chapter 350 of the Legislative Enactments of Ceylon). He produced the certificate relating to their registration as Citizens of Ceylon and there was no dispute in regard to this matter. In cross-examination, however, the petitioner stated that both he and his wife were born in India and that they were Indian Tamils by race and that he was a subject of India, being born of parents who lived in India, before he obtained citizenship rights in Ceylon. It would appear from the evidence that the relevant particulars in the Register of Births in regard to a son born on 4.10.1954 after he became a Citizen of Ceylon had been entered in the way the petitioner desired, namely, as "Ceylon Tamil". It was contended on behalf of the respondents, the Registrar-General and the Assistant Provincial Registrar of Births and Deaths, Matale, that the alterations desired by the petitioner should not be made. The learned District

Judge upheld the respondents' contention and refused the application holding that the acquisition of citizenship rights by any person did not involve a change in his race, the petitioner having admitted that he and his wife were Indian Tamils by race.

The appellant has appealed to this court from the decision of the learned District Judge *inter alia* on the ground that, by virtue of the provisions of section 18 of the Indian and Pakistani Residents (Citizenship) Act, (Chapter 350 of the Legislative Enactments of Ceylon), a person who is registered as a citizen under the Act becomes entitled to the same rights and subject to the same liabilities as any other citizen of Ceylon and also that, by reason of such registration, the appellant and his wife were Ceylon Tamils on the day of the birth of the son whose registration was in question. For these reasons, the appellant prayed for an order setting aside the order made by the learned District Judge and requiring an alteration of the words "Indian Tamil" to "Ceylon Tamil" in cages (4) and (5) of the Register of Births referred to. On account of a difference of opinion between the two Judges of this court before whom the appeal first came up for argument it was listed before us in terms of section 38 of the Courts Ordinance.

Primarily, in this appeal, the law which this court is called upon to interpret is a provision contained in the Births and Deaths Registration Act. It is necessary that the provisions of any Act should be read together with any Schedules referred to therein as well as any Forms given thereunder. A Schedule has often even greater importance than a provision in the Act itself, for a Schedule or a Form contained therein may clarify a provision that is otherwise doubtful. It is stated in Craies on Statute Law (Sixth Edition) at page 224, that the Schedule in a Statute is as much a part of the Statute and is as much an enactment as any other part, and that if an enactment in a Schedule contradicts an earlier clause it prevails against it. Maxwell on "Interpretation of Statutes" (Eleventh Edition) at page 156, says that where a passage in a Schedule to a Statute is repugnant to one in the body of the Statute the latter would prevail. Earlier at page 143 it is stated, "Clear provisions in the Schedule to an Act cannot be limited either by the title to that Schedule, or by a section in the Act itself reciting the purpose for which the Schedule is enacted". The conclusion to be drawn from these principles of interpretation is that what is provided in a Schedule referred to in a section in the Act is as important as a provision in the Act itself and would cease to prevail only in the event of repugnance to a provision in the main Act itself.

The Births and Deaths Registration Act, a non-compliance of the provisions of which is complained against in this appeal, lays down in section 10 (1) that it shall be the duty of every Registrar of Births and Deaths to register accurately and with all convenient despatch in the registers provided by the Registrar-General the particulars of the matters set out in forms A and B of the Schedule. Form A relates to

registration of births while Form B relates to registration of deaths. Cage (4) of Form A requires the Registrar to give the following particulars with regard to the father of the child which is being registered :—

Full name :
 Date of Birth :
 Place of Birth :
 Race :
 Rank or profession :

Cage (5) requires him to enter the same particulars as regards the mother of the child. To the particulars regarding " Race " in each of the cages (4) and (5) is attached a foot note numbered 2 to the following effect :

" Tamils or Moors must be described as ' Ceylon ' Tamils or Moors, or ' Indian ' Tamils or Moors, as the case may be." An application of the rule of interpretation referred to in the last paragraph to the facts of this case would lead to the conclusion that it is imperative that the provisions of the Schedule containing a Form which lays down in clear terms the particulars to be entered should be complied with, there being no specific provision in the Act itself which conflicts with such compliance. In regard to the particulars as to race the Registrar made the entry " Indian Tamil " in both cages (4) and (5) as he considered it to be the only compliance with section 10 and Form A in the Schedule and the learned District Judge to whom an application was made in terms of section 28 of the Act for an alteration of these particulars refused the application on the ground that the particulars entered by the Registrar were correct.

The main questions arising in this appeal, therefore, would appear to be :

- (1) What is the general meaning attributable to the word ' race ' ?
- (2) Can the race of a person be indirectly altered by an Act of any legislature subsequent to such person's birth ?
- (3) What is the meaning of the word ' race ' in the contemplation of the Births and Deaths Registration Act ?
- (4) Does the registration of an Indian or Pakistani resident as a Citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act entitle an Indian Tamil or an Indian Moor to be called a Ceylon Tamil or a Ceylon Moor or, as stated by the appellant in his application to the District Court, a " Citizen of Ceylon Tamil " or a " Citizen of Ceylon Moor " after such registration has been effected ? and
- (5) If the answer to (4) is in the negative or even in doubt, would a Registrar be in order in describing the race of an Indian Tamil, who has obtained Ceylon Citizenship by registration under the Indian and Pakistani Residents (Citizenship) Act, as a Ceylon Tamil, in the face of the specific provision in Form A in the Schedule to the Registration of Births and Deaths Act ?

The word 'race' does not appear to have been legally defined in our law nor has a clear definition of the word in the Municipal Law of any other country or in International Law been brought to our notice. While the word 'nationality' has been defined as being the state or quality of belonging to a nation with political independence the word 'race' has a narrower connotation. While the fact of belonging to a certain nationality will necessarily confer a certain political status carrying with it certain civil rights which every national of a country will be entitled to, the fact of belonging to a certain race will not give either such political status or such civil rights. The political status and civil rights will be determined by the nationality to which a person of a particular race belongs. Depending on the nationality laws of a particular country the nationality of a person can be altered by the acquisition of another nationality. There are no such laws which would enable a person to change his race. 'Race' has generally been described in the courts as an ethnic group. This has probably followed the dictionary meaning of the word 'race'. Webster's Dictionary gives the meaning of the word 'race', inter alia, as the "state of being one of a special people or ethnical stock; hence, more narrowly, state of belonging to a particular group or family ..." It also gives the following meanings: "The descendants of a common ancestor; a family, tribe, people, or nation, believed or presumed to belong to the same stock; a lineage; a breed; also, more broadly, a class or kind of individuals with common characteristics, interest, appearance, habits, or the like, as if derived from a common ancestor; as, the race of doctors; the race of birds." Although the word 'nation' too has been loosely used among the other words in Webster's Dictionary, in view of the consideration that political status and civil rights appear to be the dividing line between 'nationality' and 'race' in modern times and in view of the fact that nationality or citizenship laws which have been enacted in most countries deal with national groups and not racial groups and as the question for decision in the instant case revolves to some extent round the implications of the Citizenship Act in which the term 'citizen of Ceylon' is used in the sense of nationality, the use of the word 'race' as being equivalent to or co-extensive with the word 'nation' can reasonably be eliminated.

Looking at it from another angle, nationality or citizenship of an individual is unaffected by the race to which he belongs and, conversely, whatever the race a person may belong to, he is not precluded from becoming a national or a citizen of another country, as the case may be, if he conforms to the requirements of the nationality or citizenship laws of that particular country. The words 'nationality' and 'citizenship' can generally be said to have the same meaning while 'race' does not. It is only in a few countries that citizenship has a wider connotation than nationality and this is from the point of view of Municipal Law. Citizenship, in these instances, would mean the state of being endowed with full political and personal rights, while nationality would not grant all those rights.

Oppenheim (Eighth Edition—Volume I) at page 645 says : “ ‘ Nationality ’ in the sense of citizenship of a certain State, must not be confused with ‘ nationality ’ as meaning membership of a certain nation in the sense of race. Thus, according to International Law, Englishmen and Scotsmen are, despite their different nationality as regards race, all of British nationality as regards their citizenship. Thus further, although all Polish individuals are of Polish nationality qua race, for many generations there were no Poles qua citizenship. ” Here too even though ‘ nationality ’ and ‘ race ’ are used more or less as synonyms, citizenship is used in the different sense of being endowed with political and civil rights. The argument of counsel for the appellant too was in support of the principle that race was immutable while citizenship or nationality was not. This principle, of course, stands to reason. In the book entitled ‘ Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland ’ by Clive Parry, a number of instances are given, at page 264 and subsequent pages, of the circumstances in which a person belonging to a foreign race or nationality (in the sense of race) can apply for citizenship of the United Kingdom, thus showing the distinction between race and citizenship. In the instances such as those above cited from Oppenheim, I should be very surprised if a Pole or a Canadian or a Frenchman or a German by race called himself British by race after acquiring citizenship of the United Kingdom, although he would, no doubt, enjoy the very same political and civil rights as a Briton having such rights.

Bearing those principles in mind, I shall now proceed to consider the position in the instant case having regard to the specific provisions of law in the Births and Deaths Registration Act. According to Schedule A, read with section 10 of the Births and Deaths Registration Act, it is clear that the Act requires the Registrar to state in the case dealing with the race of the father or the mother of the child, where the father or the mother is a Tamil, the words ‘ Indian Tamil ’ or ‘ Ceylon Tamil ’. In my view it is not necessary in this application to engage in any profound research as to where the line is to be drawn between Tamils of recent Indian origin and Tamils of remote Indian origin for the purpose of section 10 of the Act. The appellant admitted in evidence in the lower court that he was an Indian Tamil. The fact that he applied for registration as a Ceylon citizen under the Indian and Pakistani Residents (Citizenship) Act confirms his evidence. For, Ceylon Tamils are citizens of Ceylon and are not required to take any action in order to entitle them to all the civil and political rights attaching to a Ceylon citizen. If that was so and, if a change in one’s nationality or citizenship does not change one’s race, would the Registrar of Births and Deaths have any alternative except to obey the peremptory requirement of the Act which, far from leaving the matter in doubt, gives the very words that the Registrar must use in regard to the particulars in question ?

No doubt a difficulty is created by the fact that, ordinarily, the race of a Tamil person who makes an application under the Indian and Pakistani Residents (Citizenship) Act would be Tamil, and 'Indian' or 'Ceylon' would only be an adjective describing his domicile. It may logically be argued, therefore, that when a person obtains Ceylon citizenship under this Act, he would in effect be changing his domicile and would be entitled to describe himself thereafter as a 'Ceylon' Tamil. But, of course, it has to be borne in mind that neither the Indian and Pakistani Residents (Citizenship) Act, nor the Citizenship Act deals with questions of domicile, but only with the question of citizenship. In view of the silence of the Indian and Pakistani Residents (Citizenship) Act on this question, there is no warrant by inference to describe an Indian Tamil who has obtained Ceylon Citizenship as a Ceylon Tamil on the ground of his domicile and to make use of that description which will have the effect of violating an express provision of the Births and Deaths Registration Act, which, as I have said before, has made a clear distinction between Indian Tamils and Ceylon Tamils and considered Indian Tamils as a *race* for the purposes of the Act. In the context in which it is used, therefore, one has to conclude that at least for the purposes of the Act a race called the 'Indian Tamil' race and another called the 'Indian Moor' race have been recognised. If such a race was not recognised at least for the purpose of this Act, it would be wrong to give a direction in the foot note that the race should be shown as 'Indian Tamil, 'Ceylon' Tamil, 'Indian' Moor or 'Ceylon' Moor. Further, quite apart from the special meaning given to "Indian Tamils" as being a race in the Act, in view of the varied meanings given to the word 'race' in Webster's Dictionary quoted earlier, it would not be inappropriate nor without justification to call the Indian Tamils a race. It is, therefore, necessary to apply the same rules which I have referred to earlier in considering whether the conferment of Ceylon citizenship on an Indian Tamil has the effect of changing his race or not.

The argument of counsel for the appellant on this matter, at the time it was advanced, had considerable attraction and appeared convincing. He submitted two aspects for our consideration based on section 6 (2) (iv) (a) of the Indian and Pakistani Residents (Citizenship) Act which was to the effect that it shall be a condition for allowing any application for registration under this Act that the applicant shall have produced sufficient evidence to satisfy the Commissioner that the applicant clearly understands that in the event of being registered as a Citizen of Ceylon, 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 of origin of the applicant or the applicant's parent, ancestor or husband, as the case may be. Mr. Tiruchelvam submitted that the renunciation of all the rights to the civil and political status referred to in this provision would preclude an applicant who is registered as a citizen from calling himself thereafter an Indian Tamil by race. In other words, his

contention was that once an Indian Tamil was registered as a citizen of Ceylon under this Act, it would be wrong for him to call himself an Indian Tamil and he thereafter became a Ceylon Tamil and that, therefore, if he continued to call himself an Indian Tamil, it would contradict the position that he has been registered as a Ceylon Citizen and has renounced all rights to the civil and political status he has had prior to that, or would, but for such registration in Ceylon, have had. The other aspect he advanced for our consideration was that it would be discourteous for an Indian Tamil, who was conferred Ceylon citizenship by this country, to enjoy the privileges of citizenship and to continue to call himself an Indian Tamil. On a closer examination of this submission, however, and upon a consideration of the distinction between 'race' and 'citizenship' which I have referred to earlier, it seems to me that there is no difficulty in reconciling the provision relied on by counsel for the appellant with the fact of an Indian Tamil who is granted citizenship continuing to call himself an Indian Tamil by race. For, the accent in section 6 (2) (iv) (a) appears to me to be on the words "civil and political status" which is a necessary attribute of citizenship and not an attribute of race.

I shall now proceed to deal in greater detail with the interpretation of the words contained in the relevant provision. Maxwell on 'Interpretation of Statutes' says:—

"The preamble to a statute, even after repeal, is a good means of finding out its meaning and, as it were, a key to the understanding it. It may legitimately be consulted to solve any ambiguity or to fix the meaning of the words which may have more than one, or to keep the effect of the Act within its real scope whenever the enacting part is in any of these respects open to doubt." It is useful to look at the preamble to the Indian and Pakistani Residents (Citizenship) Act in terms of this definition. This preamble sets out the purpose as being an Act to make provision for granting the *status of a Citizen of Ceylon by Registration* to Indians and Pakistanis who have the qualification of past residence in Ceylon for a certain minimum period. In interpreting any section of the Act whose meaning for some reason is not clear, it behoves one not to travel outside its scope and always to bear in mind the purpose of the Act. The preamble to the Act refers to the status of a Citizen of Ceylon which is sought to be conferred on certain Indians and Pakistanis with certain residence qualifications. Section 6 (2) (iv) (a) of the Act on which reliance is placed to support the argument that an Indian Tamil ceases to be such and becomes a Ceylon Tamil after registration as a Ceylon Citizen, also refers to the rights to the civil and political status which such a Ceylon Citizen is deemed to have renounced on the conferment of Ceylon Citizenship. The contention of counsel being, or being tantamount to saying, that one of the rights so renounced is the right to be called an Indian Tamil—which necessarily involves the corollary that one of the rights conferred by Ceylon Citizenship in this case is the right to be called a Ceylon Tamil—the true meaning of the word 'status' or the words 'civil and political

status' in the context referred to above assumes the greatest importance. As I have pointed out earlier in this judgment, political status and civil rights have no relation to race and if a person's race continues to be what it was, despite his change of civil and political status, the only correct course of action for the Registrar will be to act in the manner he has done. We are not called upon, in this case, to decide the abstract question as to what the race of the child which is sought to be registered would or should be and it is, therefore, unnecessary to delve into that aspect in the present appeal.

Yet another way of testing this matter is to leave aside for a moment the Indian and Pakistani Residents (Citizenship) Act and to consider whether a person, who belongs to a race different from Indians or Pakistanis and who obtains Ceylon citizenship under the Citizenship Act, will be entitled to call himself by any other race than his original race if he had to register the birth of a child. Would it be in order for an Englishman or Frenchman or Italian or a Chinese by race, for instance, who is granted citizenship under section 13 of the Citizenship Act to call himself by any other race in furnishing particulars to the Registrar of Births in respect of the particulars to be entered in cages (4) and (5) of Form A in the Schedule. The question he is called upon to answer for this purpose is what his race is and not whether he is a citizen of Ceylon or not. The obvious answer seems to me to be to mention his original race as a member of which he applied for and obtained citizenship. If that is the answer to the question vis-a-vis a person registered as a Citizen of Ceylon under the Citizenship Act, the principle cannot be different in the case of one registered as such under the Indian and Pakistani Residents (Citizenship) Act.

Considering the case from yet another aspect, would the entry of the particulars of the race of the father or the mother as "Indian Tamil" in a Birth Register defeat the purpose of even the Indian and Pakistani Residents (Citizenship) Act, which again, it may be noted, we are not called upon to interpret in the present appeal, although, admittedly, the provisions of section 6 (2) (iv) (a) indirectly arise for consideration. The answer to this question to my mind is unambiguously in the negative. For, whatever may be the race of the person, who is granted citizenship of Ceylon by registration under this Act, he will be fully entitled to *all* the rights to the civil and political status which are granted by the certificate of registration and they will continue to remain undiminished be he called "Indian Tamil" or "Indian Moor" or "Pakistani Tamil" or "Pakistani Moor", unless and until he either renounces his Ceylon Citizenship or does some other Act, such as acquiring some other nationality or citizenship, which will *ipso facto* have the effect of depriving him of his Ceylon Citizenship. Even on the ground of possible mischief or prejudice to the person who has been registered as a Ceylon Citizen or to any member of the family, therefore, I cannot see how the contention of counsel for the appellant can prevail because mischief or prejudice there is none.

For these reasons, I am of opinion that the Registrar of Births and Deaths was right in noting down the particulars of the race of the father and the mother of the child as he did. The appeal must, therefore, fail and it is accordingly dismissed.

T. S. FERNANDO, J.—I agree.

ALLES, J.—I agree.

Appeal dismissed.

