

1958

Present : Weerasooriya, J.

K. P. P. PILLAI, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 111—Citizenship Case No. F679

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Inquiry thereunder—
Procedure—Sections 6 (2) (ii) as amended by Act No. 45 of 1952, 9 (1),
9 (3) (a), 14 (4).*

Notice under section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, was served on the appellant on the 8th July, 1952, requiring him to prove that his minor child was “ordinarily resident in Ceylon” in terms of section 6 (2) (ii). Subsequent to the date of the notice, section 6 (2) (ii) was amended by Act No. 45 of 1952, and, under the amendment, two new grounds were required to be proved by the appellant.

Held, that inquiry under section 9 (3) (a) could not be held unless the Commissioner had previously served on the appellant a fresh notice setting out the two new grounds.

APPPEAL under the Indian and Pakistani Residents (Citizenship) Act.

C. Renganathan with *C. Shanmuganayagam*, for the appellant.

R. S. Wanasundera, Crown Counsel, for the respondent.

August 27, 1958. WEERASOORIYA, J.—

In this case notice under Section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, was served on the appellant on the 8th July 1952. This notice was prior to the amendment of Section 6 (2) (ii) of the Act by Act No. 45 of 1952, which came into operation on the 28th November, 1952.

In that notice the ground on which the appellant was informed that his application would be refused unless he showed cause to the contrary was set out as follows :—

“ You have failed to prove that your daughter Saraswathie has been ordinarily resident in Ceylon within the meaning of the Act. ”

To this notice the appellant replied by letter dated the 25th August, 1952, purporting to show cause against the refusal of this application.

On the 19th January, 1956, the Deputy Commissioner wrote to the appellant fixing his application for inquiry under Section 9 (3) (a) for the 20th February, 1956, and stating that he would have to prove that he

had "complied with the requirements stated overleaf". The requirements referred to consisted of two grounds which were quite different from the ground specified in the notice under Section 9 (1) which had already been served on the appellant.

The reason for these new grounds was sought to be explained in the following note which was appended to the grounds: "Since the issue to you of Section 9 (1) Notice under Act 3 of 1949 on 8.7.52, the Act was amended by Amendment Act No. 45 of 1952 under which uninterrupted residence of wife and children of an applicant is required to be established. Vide section 2 of Amendment Act No. 45 of 1952". Thereafter the inquiry took place on 29th February 1956. It was confined to the two new grounds. After inquiry the Deputy Commissioner made order refusing the appellant's application for registration and the present appeal is against that order.

Mr. Renganathan who appeared for the appellant submitted that the proceedings before the Deputy Commissioner on the 29th February, 1956, were without jurisdiction, since it was incumbent on the Deputy Commissioner to have issued a fresh notice under Section 9 (1) (a) setting out the new grounds before he could have held the inquiry under Section 9 (3) (a) in respect of them.

It seems clear on a consideration of the provisions of Section 9 that no inquiry can be held under sub-section (3) thereof unless the Commissioner had previously issued a notice under sub-section (1), and that the inquiry should be confined to the grounds specified in that notice. If after the amending Act No. 45 of 1952 came into operation the Deputy Commissioner decided that an inquiry should be held on the new grounds set out in his letter dated the 19th January, 1956, he should have issued a fresh notice in respect of them under Section 9 (1) and proceeded to fix the matter for inquiry under section 9 (3) (a), after the appellant had shown cause. I do not think that sub-section (4) of Section 14 can be construed as enabling the Deputy Commissioner to override the express provisions of section 9 and evolve a procedure of his own.

I would accordingly set aside the order appealed from and remit the proceedings so that fresh steps may be taken under section 9 (1) of the Act notifying the grounds on which the application for registration will be refused unless cause is shown by the applicant. I also direct that the fresh inquiry, if any, under section 9 (3) be held by a Deputy Commissioner other than the one who made the order appealed from.

The appellant will be entitled to his costs which are fixed at Rs. 105.