1958 *Present:* **T. S. Fernando, J.**

R. VYTHINATHAN, Appellant, *and* THE COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 913—Citizenship Application C 2,183

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for registration as citizens—Refusal on ground of absence of genuine intention to settle permanently in Ceylon—Supreme Court will not interfere in the absence of misdirection.

The Commissioner for Registration of Indian and Pakistani Residents refused to register as citizens an Indian resident, his wife and four minor children on the ground that their permanent settlement in Ceylon was negatived by evidence relating to the birth and education of the children in India which the Commissioner considered as not being indicative of a genuine intention to settle permanently in Ceylon.

Held, that the question whether the applicants had permanently settled in Ceylon was primarily one for decision by the Commissioner, and where it could not be said that the decision was one which the Commissioner could not fairly or reasonably have reached on the evidence before him the Supreme Court would not, in the absence of misdirection on the part of the Commissioner, interfere with his decision.

APPEAL, under section 15 of the Indian and Pakistani Residents (Citizenship) Act.

C. Shanmuganayagam, for the applicant-appellant.

E. R. de Fonseka, Crown Counsel, for the respondent.

Cur. adv. vult.

August 25, 1958. T. S. FERNANDO, J.—

The appellant's application for registration of his wife, his four minor children and himself as citizens of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, was refused by the Commissioner, and the reasons for the refusal are to be found in the latter's order of 6th April 1954. This appeal canvasses the correctness of the order of refusal.

The only question at issue at the inquiry which preceded the refusal of the application was whether the applicant had permanently settled in Ceylon. In deciding this question the Commissioner believed he had to decide whether the applicant had abandoned his domicile of origin. This very question has since been the subject of decision by their Lordships of the Privy Council in *Tennekoon v. Duraisamy* [1]. In that case, Lord Morton of Henryton in delivering the opinion of the Judicial Committee stated that the question of proving a " change of domicile " did not come at all into the matter of a decision as to whether an applicant for registration as a citizen had permanently settled in Ceylon. In the

light of that decision it is now beyond controversy that the Commissioner had misdirected himself on the point, and, if the Commissioner's order of refusal rested purely on his determination that the applicant had not established that he had abandoned his domicile of origin, this appeal must be allowed and the Commissioner directed to take the other steps indicated in the Act on the basis that the applicant has made out a *prima facie* case for registration.

My attention has however been drawn to the evidence recorded at the inquiry in regard to the place of birth of all four children of the applicant and particularly to the evidence relating to their education. The dates of birth of the four children are given as 30th April 1933, 10th February 1943, 25th November 1944 and 8th January 1947 respectively. Sathiyawageswaran, the eldest, was the only child living in 1942 and it would appear that, although he was for a short period of time in a school in Ceylon, he was taken to India in 1942, i.e. when he was about 9 years of age. Although he came back in 1947 along with the applicant's wife and the three younger children, he returned to India for his education because—to use the applicant's own words—" he could not fit suitably into the scheme of studies in a Ceylon school. " The girl Nagalakshmi is said to have been in Ceylon since 1947, i.e. from the time she was four years of age and has never been to school in Ceylon. The applicant testified that this girl was sent to a school in India for a short time. She must therefore have been sent to school in India when she was quite tiny. No reason has been advanced as to why she was not sent to a school in Ceylon where primary education is compulsory. The third child, Ramanathan was sent to a school in India from the time he was about 6 years of age. He was in school in India even at the time of the inquiry, and one reason given for choosing a school in India for this boy was that there was no suitable living accommodation for him in Ceylon. Two other reasons offered were (1) that the applicant's father wished that the child should remain with him and (2) that, as he has not learnt any English, he cannot " fit into a secondary school " in Ceylon. In regard to the youngest child, the boy Krishnan, there is no explicit evidence that he is in school in India or in Ceylon. The application for foreign exchange made by the applicant himself on 17th June 1948 shows, however, that the money was required, *inter alia*, for the education of his 3 children. The applicant is not an uneducated man and has been for many years a clerk in Colombo mercantile establishments. As the girl was on the applicant's evidence in Ceylon from 1947 onwards, the clear implication of the statement in the application for exchange is that the youngest child was also being educated in India.

With these facts before him, the Commissioner has stated that, even if he were to disregard the declarations made by the applicant in his applications for foreign exchange that he was temporarily resident in Ceylon, he should still regard permanent settlement in Ceylon as not having been proved. Assuming that the statements made by the applicant in the applications to the Exchange Controller were factually incorrect, the question which I have to ask myself appears to be whether there was material before the Commissioner on which he could reasonably have come

to the conclusion that the applicant had failed to establish the fact of permanent settlement. I must remind myself that in *Duraisamy's* case[1] their Lordships of the Privy Council, while expressing the opinion that election to apply for registration combined with long and continuous residence affords strong evidence that an applicant has permanently settled in Ceylon, nevertheless stated that they cannot find that the combination of election and long and continuous residence precludes the Commissioner from coming to a decision, after considering all relevant matters, that at the time of his application the applicant had not a genuine intention to settle permanently in Ceylon. The question was one primarily for decision by the Commissioner, and, on the facts relating to the children. he has stated that he would have expected a person who had settled in Ceylon permanently to have reconciled himself to putting up with any difficulties involved in the birth and education of his children in Ceylon rather than arrange that these things should take place in India. possibly at greater expense to himelf. I am quite unable to say that the Commissioner has misdirected himself on the point involved and, as I am also unable to say that in the state of the facts before him his decision is one which he could not fairly or reasonably have reached, the correct course for me, sitting in appeal, to take is to decline to interfere with the order of refusal. The appeal is accordingly dismissed with costs which I fix at Rs. 105.

Appeal ***dismissed.***