

1960

Present : T. S. Fernando, J.

S. S. SEYED ALI IDROOS, Appellant, and THE COMMISSIONER
FOR THE REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent

S. C. 57—Citizenship Application CC 4698

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Failure to attach
to an application an affidavit as required by Section 7 (1) (b)—Proper stage at
which effect of such failure should be considered—Scope of an inquiry under
Section 9 (3).*

An inquiry under Section 9 (3) of the Indian and Pakistani Residents (Citizenship) Act must be limited to the merits of the application and cannot deal with such matters as the due form of the application. The proper stage at which an application which is not in due form should be returned or rejected is when it is received by the Commissioner.

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

M. S. M. Nazeem, with *M. T. M. Sivardeen*, for the applicant-appellant.

Ananda G. de Silva, Crown Counsel, for the respondent.

Cur. adv. vult.

May 30, 1960. T. S. FERNANDO, J.—

The appellant transmitted to the Commissioner an application for citizenship which appears to have reached the Commissioner's office on 1st August 1951. On 23rd August 1957 a notice under section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, was sent out informing the appellant that the Deputy Commissioner inquiring into his application had decided to refuse it on certain grounds which were specified in the notice. On the appellant informing the Deputy Commissioner that he had cause to show against the proposed refusal, a notice issued to the appellant under section 9 (3) fixing a date for inquiry and again specifying the requirements in respect of which

proof had to be furnished by him. These requirements as they appeared in the notice are reproduced below :—

- “ 1. That you had permanently settled in Ceylon.
2. That you were resident in Ceylon from 1.1.1936 to 31.8.1951 without absence exceeding 12 months on any single occasion.
3. That you were on the date of your 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 yourself and your dependants.
4. That your wife is dead (Death certificate to be furnished).
5. That the facts and particulars set out in your application is supported by an affidavit as required under section 7 (1) (b) of the Act.
6. Birth certificate of your child should be produced. ”

An inquiry was held by the Deputy Commissioner on 16th December 1957 and was continued on 10th January 1958, and at the conclusion of the inquiry order was made rejecting the application on the ground of failure to comply with section 7 (1) (b) of the Act. The Deputy Commissioner stated in the course of the order that on the documentary and oral evidence led he was satisfied that the appellant had proved that he possessed all the qualifications necessary to entitle him to be registered as a citizen under the Act. The application therefore came to be rejected for the sole reason that at the time he transmitted the application it was not supported by an affidavit of the applicant as to the facts and particulars set out therein. The reasons set out in the Deputy Commissioner's order imply that these same facts and particulars have now been proved by sworn testimony or by other evidence deemed sufficient by the Deputy Commissioner. The application is required by the statute itself to be in a prescribed form and this prescribed form has relegated the affidavit to a position where it might easily be overlooked.

Learned counsel for the appellant has contended that the provision in section 7 (1) relating to supporting affidavits is merely directory, and that time is not the essence of the requirement relating to these affidavits. I am, however, unable to agree that the provision in question is merely directory as that will involve placing one interpretation on the word “shall” appearing in section 7 (1) when considering its meaning in relation to clauses (a) and (c) of the said sub-section and a different interpretation when considering it in relation to clause (b). Another argument of counsel that there is nothing in the statute which prevents the affidavit or affidavits being furnished at a later date cannot also be maintained in view of the second part of that very sub-section which

specifically enables affidavits of persons other than the applicant himself to be furnished at any time before the disposal of the application. Moreover, in the case now before me it is not suggested that the required affidavit was submitted at any later date.

I have been referred by learned Crown Counsel to the decision of this court in *Marianthony v. The Commissioner for the Registration of Indian and Pakistani Residents*¹ in which Sinnetamby J. held that a Commissioner holding an inquiry under section 9 (3) has no jurisdiction to inquire into matters not specified in the notice served on the applicant. Crown Counsel distinguishes that case as being inapplicable here where the notice specifically mentioned that one of the matters upon which proof was required was that the application was supported by affidavit of the applicant himself. More to the point, however, is a later decision, again by Sinnetamby J.—vide Supreme Court Minutes of 2nd April 1957 in S. C. Appeal No. 58/I. & P. R. (Citizenship) Application No. L. 6320—in which he observed that in a series of cases this court has held that an inquiry under section 9 (3) must be limited to the merits of the application and that in such an inquiry a Deputy Commissioner cannot deal with such matters as the due form of the application. It would appear from the judgment in that case that the question whether there was an affidavit in due form had there arisen in the course of an inquiry under section 13 of the Act, but that circumstance has no material bearing upon the issue in the case now before me. I should, however, add that Sinnetamby J. observes in the course of the unreported judgment referred to above that the proper stage at which an application which is not in due form should be returned or rejected is when it is received by the Commissioner. I am content respectfully to follow these observations and to apply them to the case now before me, and have the satisfaction besides of knowing that thereby a man who has furnished to the Deputy Commissioner proof that he and his son had all the rigorous qualifications required by the Act to enable them to be registered as citizens does not lose his rights to the valued privilege of citizenship merely because he has inadvertently failed to comply with a requirement which becomes a purely technical requirement when considered against the background of the sworn testimony and documentary evidence he has furnished at the inquiry.

The order rejecting the application is set aside, and the Commissioner is hereby directed to take the other steps required by the Act on the basis that the appellant has made out a prima facie case for the registration of his son and himself as citizens. The appellant is entitled to the costs of this appeal which are fixed at Rs. 105.

Order set aside.

¹(1957) 58 N. L. R. 431.